FEDERAL REGISTER

VOLUME 24 NUMBER 254

Washington, Thursday, December 31, 1959

Title 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER C—OPERATING LOANS

[FHA Instruction 441.1]

PART 341—POLICIES AND AUTHORITIES

Approval Authorities

Section 341.12, Title 6, Code of Federal Regulations (24 F.R. 8406) is revised to increase the loan approval authority of State Directors and to read as follows:

§ 341.12 Loan approval.

State Directors are hereby authorized to approve loans to eligible applicants subject to applicable policies and provisions contained in this subpart and Part 342 of this chapter. In order to provide for any unforeseen need for credit and to protect the Government's interest, ordinarily, it is necessary for a reasonable margin to be maintained between the maximum indebtedness limitation and the amount loaned to an applicant.

(a) State Directors are authorized to redelegate, and to restrict or revoke such redelegations, to qualified State Office employees, County Supervisors, and GS-7 Assistant County Supervisors, authority to approve loans provided that County Supervisors and GS-7 Assistant County Supervisors may not be authorized to approve loans which will result in an applicant's becoming indebted in excess of $10,000 principal for loans made under Title II of the Bankhead-Jones Farm Tenant Act, as amended, and for Emergency loans.

(Secs. 21, 41, 44, 50 Stat. 524, as amended, 528, as amended, 530, as amended; 7 U.S.C. 1007, 1015, 1018; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188)

Dated: December 28, 1959.

MALCOLM H. HOLLIDAY, Jr.,
Acting Administrator,
Farmers Home Administration.

[F.R. Doc. 59-11148; Filed, Dec. 30, 1959; 8:46 a.m.]

SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

[FHA Instruction 455.1]

PART 371—CHATTEL SECURITY

Subpart B—Liquidations

Subpart B, Part 371, Title 6, Code of Federal Regulations (13 F.R. 9454, 14 F.R. 2435, 16 F.R. 7379) is revised to read as follows:

Sec.
371.21 General.
371.22 Policy.
371.23 Approval of liquidations.
371.24 Acceleration of unmatured installments.
371.25 Advances to protect the Government's interest in security property pending liquidation.
371.26 Sale of security property by borrowers.
371.27 Repossession of security property.
371.28 Care of repossessed property pending sale.
371.29 Tests and inspections of livestock.
371.30 Authority to bid at execution or foreclosure sale conducted by U.S. Marshals or at liquidation sale by prior lienholders.
371.31 Sale of repossessed property by the Government.
371.32 Accounting for proceeds of liquidation sales.
371.33 Handling civil and criminal cases.
371.34 Care and disposition of acquired security property.
371.35 Reports of inventory transactions; acquired security property.
371.36 Bankruptcy and insolvency.
371.37 Deceased borrowers.
371.38 Transfer and assumption of chattel security and debts.
371.39 Agricultural Stabilization and Conservation Service set-offs.
371.40 Releases and satisfactions.

AUTHORITY: §§ 371.21 to 371.40 issued under 7 U.S.C. 1015, 1025, 16 U.S.C. 590s, 590w; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188. Additional authorities are cited in parentheses following the sections affected.

§ 371.21 General.

This subpart establishes the policies, procedures, and authorities for liquidating chattel security and disposing of chattel property acquired by the Government through liquidation, and for handling civil actions, bankruptcy and

(Continued on next page)

CONTENTS

FEDERAL REGISTER

REpublic 7-7500 Extension 3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

CONTENTS—Continued

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

CODIFICATION GUIDE—Con.

similar proceedings, and probate or administration proceedings, and alleged criminal violations.

(a) *Insured loans.* When liquidation involving an insured loan is approved, the State Director will take immediate steps to obtain an assignment of the loan to the Government.

(b) *Definitions.* (1) "Government" means the United States of America, Farmers Home Administration and its predecessor agencies, including the Regional Agricultural Credit Corporation, and the United States operating under "2(f) agreements" with State Rural Rehabilitation Corporations or other State agencies or officials pursuant to 40 U.S.C. 440(f).

(2) "Default" is the failure on the part of the borrower to observe his agreements with the Government as contained in notes, mortgages, and other similar instruments.

(3) "Liquidation" is the act of (i) selling chattel security property in line with the policies expressed in § 371.22 for the purpose of closing out the loan in those cases in which it has been determined that no further assistance will be given, or (ii) instituting civil suit against a borrower or a third party to recover chattel security property or the value thereof, or to recover amounts owed the Government, or (iii) filing claims in bankruptcy or similar proceedings or in probate or administration proceedings for the purpose of closing out the loan. Cases which become paid up from the normal farm income or income resulting from the planned reduction in the size of the enterprise or by refinancing will not be considered as liquidations.

(4) "Civil action" refers to court proceedings to protect the Government's financial interests such as by obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure of security instruments. "Bankruptcy" and similar proceedings to impound and distribute the bankrupt's assets to his creditors, and "probate" and similar pro-

ceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors are treated separately in this subpart and are not included in the term "civil action."

(5) "Criminal action" refers to court prosecution by the Government to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes including, but not limited to, (i) unauthorized sale of mortgaged property with intent to defraud, (ii) purchase of mortgaged property with intent to defraud and without payment of the purchase price to the Government, (iii) falsification of assets or liabilities in loan applications, (iv) application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose, (v) decision, after obtaining a loan, to use and using the funds for an unauthorized purpose and then making false statements regarding their use, or (vi) by scheme, trick, or other device, covering up or concealing misuse of loan funds or unauthorized disposition of mortgaged property or other illegal acts, or (vii) any other false statements or representations in any matter relating to Farmers Home Administration matters.

(6) "Abandonment" is the voluntary relinquishment of control by the borrower of security property without providing for its care.

(7) "Security property" is chattel property, including growing crops, which is under lien to the Farmers Home Administration.

(8) "Repossessed security property" is security property of which the Government has custody, but which is still owned by the borrower.

(9) "Foreclosure sale" is the act of selling security property by the Government either under the "Power of Sale" in the mortgage or through court proceedings.

(10) "Acquired security property" is security property of which the Government has become the owner through liquidation action authorized by this subpart and chattel property acquired by the Government by execution or other sales.

§ 371.22 Policy.

(a) *Liquidation.* It is the policy of the Farmers Home Administration to continue with borrowers until they are able to graduate to other sources of credit so long as they have reasonable prospects of eventual success, and provided they continue to make payments in accordance with their ability, account properly for the security property and otherwise meet their obligations under all loans owed the Farmers Home Administration. However, liquidation action will be undertaken when, under the above policy, it is determined that no further assistance will be given to a borrower and when one or more of the conditions set forth below exist. Ordinarily, before a decision is made to initiate liquidation action, the facts in the case will be presented to the County Committee for consideration and recommendations. When liquidation action is taken, it is the policy to liquidate all security property or so much thereof as is necessary to pay the Farmers Home Administration indebtedness in full.

(1) A borrower is delinquent and his refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming operations, or other circumstances within his control.

(2) A borrower whose loan was made with the expectation that he would operate a farm, ceases to farm and voluntary liquidation can be accomplished.

(3) A borrower is in default by unauthorized disposal of security property, or by not properly caring for security property to such an extent that the security interests of the Government are or may be impaired, or by not accounting properly for security property, or by some other action which resulted in bad faith in connection with his loan.

(b) *Civil action.* Court action or other judicial process will be recommended when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect the Government's security interests have been exhausted and when one or more of the following conditions exist: There is a need to repossess mortgaged property or foreclose a lien when such action cannot be accomplished by other means authorized in this subpart; there is a need for filing claims against third parties arising out of conversion or other action; the borrower fails to make payments due on his debt in accordance with his reasonable ability to pay and has assets or income from which collection can be made; the Farmers Home Administration or its security property becomes involved in court action through foreclosure by a third party lienholder or through some other action; or other conditions exist which indicate that court action may be necessary to protect the Government's interests. The County Supervisor is not authorized to commit the Government to institute court action to effect collections.

(c) *Criminal action.* When factual information has been obtained indicating that criminal statutes of the United States may have been violated, such facts will be reported promptly.

§ 371.23 Approval of liquidations.

County Supervisors are authorized to approve liquidation of security property which can be accomplished by the use of Form FHA-217, "Agreement for Public Sale," Form FHA-851, "Statement of Conditions on Which Lien Will Be Released," Form FHA-209, "Agreement for Voluntary Liquidation of Mortgaged Chattels," or under the "Power of Sale" in the lien instrument.

§ 371.24 Acceleration of unmatured installments.

When a case has been approved for liquidation, the unmatured installments will be accelerated.

§ 371.25 Advances to protect the Government's interest in security property pending liquidation.

(a) When liquidation has been approved and property serving as security is in imminent danger of loss or deterioration, State Directors are authorized to protect the Government's interest and approve advances in payment of delinquent taxes or assessments which constitute a lien prior to the lien of the Farmers Home Administration in accordance with § 371.32, premiums on insurance essential to the protection of the Government's interest, and other costs necessary to protect or preserve property serving as security, including necessary transportation costs. However, such advances may not be made unless the amount advanced becomes a part of the debt secured by the Government's lien, or for expenses of administration of estates or for litigation costs. Such advances may not be made in any case after the United States Marshal or other similar official has taken possession of property to be sold by him, but if he seizes the property and delivers it to the Farmers Home Administration for sale by it, costs incurred by Farmers Home Administration after delivery to Farmers Home Administration will be paid by it.

(b) Any such costs incurred by the Government in protecting its security interest may be paid by means of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and will be charged to the borrower's loan account, or may be paid out of the proceeds of the sale of mortgaged property.

§ 371.26 Sale of security property by borrowers.

(a) *Public sale.* When security property is to be sold by the borrower in his own name, Form FHA-217 will be executed by the borrower, all lienholders, the clerk of the sale or other person who will receive the sale proceeds, and then by the County Supervisor on behalf of the Government. No official of the Farmers Home Administration is authorized to bid at such sales. The County Supervisor or Assistant County Supervisor will arrange to receive promptly the proceeds of the sale which are due the Government for application on the borrower's indebtedness.

(b) *Private sale.* If the borrower has ready purchasers and can effect an immediate private sale of all of the security property for its present market value or the remaining security property consists of items of small value or a limited number of items which do not justify public sale, Form FHA-851 may be used to liquidate the security property. If the security property is not sold within 30 days after the execution of Form FHA-851, it will be disposed of in accordance with paragraph (a) of this section or § 371.31.

§ 371.27 Repossession of security property.

(a) *Taking possession.* County Supervisors and Assistant County Supervisors will take possession of security property for the Government in the situations and under the conditions indicated below:

(1) When security property has been abandoned by a borrower.

(2) When Form FHA-209 has been signed by the borrower, the County Su-

pervisor and by all other lienholders authorizing the sale and distribution of proceeds in accordance with the priority of liens. In all cases where Form FHA-209 is executed, minimum prices will be set forth for all items except farm commodities for which there is a locally established market, and perishable property.

(3) When possession of the property can be obtained peaceably even though the borrower has not signed Form FHA-209.

(4) When security property is delivered to the Farmers Home Administration as a result of court action.

(5) In addition, when the Farmers Home Administration holds a junior lien on items of security property, such items will be repossessed and sold only when the prior lienholder(s) does not intend to enforce his lien and then only when the following are met:

(i) With respect to subparagraphs (1) through (3) of this paragraph, the value of such security property, based on a conservative appraisal, is substantially greater than the amount of the prior lien(s).

(ii) With respect to subparagraphs (1) through (3) of this paragraph, agreement is reached with the prior lienholder(s) that the property may be sold and that such lienholders will release their liens on the property after sale. This agreement will be obtained on Form FHA-845, "Agreement of Lienholders to Sale of Mortgaged Chattels."

(iii) With respect to subparagraphs (1) through (3) of this paragraph, in the event the prior lienholders will not agree to the liquidation of the property, the amount of their liens may be paid off if the circumstances justify, based upon a consideration of the factors indicated in subparagraph (5)(i) of this paragraph and provided their notes and liens are assigned to the Government on forms prepared or approved by the Attorney in Charge. Payment of prior liens not in excess of $2,500 in any one case may be approved by the State Director. Such payments will be made by means of Standard Forms 1034 and charged to the borrower's account in accordance with the provisions of § 371.31 (c). Prior liens in excess of $2,500 in any one case will not be paid off without prior authorization by the National Office.

§ 371.28 Care of repossessed property pending sale.

When possession has been taken of security property as provided in § 371.27 (a), County Supervisors, Assistant County Supervisors, Emergency Loan Supervisors, or Assistant Emergency Loan Supervisors will arrange for the custody and care of such property for the period specified in § 371.31 and are authorized to execute the necessary agreements as follows:

(a) *Livestock.* Livestock will be delivered to a person who is capable of, and has adequate facilities for, caring for and feeding the livestock. Reasonable compensation will be agreed upon in advance. Whenever practicable, animal products will be computed as a part or all of the caretaker's compensation. Delivery, however, will be made pursuant only to a written agreement on Form FHA-210, and the number of days covered by the agreement will be entered in the blank space in paragraph 2 of the form. When an approved extension of time is secured in accordance with § 371.31, Form FHA-210 will be amended as appropriate and initialed by the parties thereto, or a new agreement executed covering such extension. If a more favorable arrangement cannot be obtained, custody agreements may provide that the Farmers Home Administration will make advances to supply feed necessary to maintain the livestock.

(b) *Machinery, equipment, tools, harvested crops, and other chattels.* This type of property will be properly stored and cared for pending its sale. Space may be leased for this purpose, if necessary, upon prior approval of the State Director, or such property may be stored and cared for by agreement on Form FHA-210 as prescribed above in the case of livestock. This type of property will not be put to use by the caretaker but will be held in storage only.

(c) *Crops.* Arrangements will be made for the custody, care, and disposition of growing crops and for unharvested matured crops. Form FHA-211 will be used for this purpose unless the crops are to be sold in place. When Form FHA-211 is used, it will be executed by the caretaker and by the landlord unless he gives his consent otherwise in writing.

§ 371.29 Tests and inspections of livestock.

If required by State law as a condition of sale, livestock being sold will be tested or inspected prior to the sale.

§ 371.30 Authority to bid at execution or foreclosure sales conducted by U.S. Marshals or at liquidation sales by prior lienholders.

(a) *Execution sales.* State Directors are authorized hereby to bid on behalf of the Government at execution sales when personal property which is not covered by the Farmers Home Administration crop and chattel lien is being sold to satisfy a Farmers Home Administration judgment lien, and at Farmers Home Administration foreclosure sales conducted by U.S. Marshals. Such bidding will be subject to the provisions of § 371.31(a) (2). This authority may be redelegated on an individual case basis to County Supervisors, Assistant County Supervisors, Emergency Loan Supervisors, or Assistant Emergency Loan Supervisors.

(b) *Liquidation sales by prior lienholders.* County Supervisors, Assistant County Supervisors, Emergency Loan Supervisors, and Assistant Emergency Loan Supervisors are authorized hereby to bid on property on which the Government holds a junior lien subject to the provisions of § 371.31(a) (2).

§ 371.31 Sale of repossessed property by the Government.

All repossessed property will be sold as soon as practicable and legally permissible after repossession. Livestock, equipment, tools, and other chattels (except irrigation equipment which, together with real estate, serves as security for Soil and Water Conservation loans and is to be sold or transferred with the farm) must be sold within 60 days from the date of the repossession; except in those states where the maximum period of time for which costs of custody, care, and storage legally may be charged to the borrower's account is less than 60 days, the period of time provided by law will be the maximum period for which repossessed property may be held for sale. Crops will be sold within any time limit prescribed by State law. Such sales will be made as soon as the maximum net return can be realized but not later than 60 days after harvesting or the normal marketing time for such crops unless an extension of time is granted by the State Director.

(a) *Public sale.* Repossessed property may be sold at public sale either pursuant to agreement on Form FHA-209, or, when authorized by the State Director, pursuant to the "Power of Sale" in the lien instrument. If requested, Form FHA-213C, "Bill of Sale 'C' (Sale Through Government as Liquidating Agent)," or other necessary instrument to convey all of the right, title, and interest of the Government and the borrowers will be executed and delivered to the purchaser. The method of conducting such public sales will be prescribed by the State Director subject to the following requirements:

(1) *Advertising*—(i) *Pursuant to "Power of Sale" in the lien instrument.* Public sales held pursuant to the "Power of Sale" in the lien instrument will be advertised as provided in the lien instrument or as otherwise required by state law.

(ii) *Pursuant to agreement on Form FHA-209.* Public sales may be advertised by posting handbills.

(2) *Bidding at sales.* The property will be sold to the highest bidder and where the successful bidder is other than the Government, it will be sold for cash (as opposed to credit sales). The County Supervisor, Assistant County Supervisor, Emergency Loan Supervisor, or Assistant Emergency Loan Supervisor will attend all public sales of repossessed property held pursuant to this paragraph and will bid on behalf of the Government where necessary to protect its interests.

(b) *Private sale.* (1) Repossessed property may be sold at private sale for cash under the conditions agreed to by the borrower through the execution of Form FHA-209, provided the sale price for each item is at least equal to the minimum price established by the agreement. If requested by the purchaser, County Supervisors, Assistant County Supervisors, Emergency Loan Supervisors, or Assistant Emergency Loan Supervisors will execute and deliver to the purchaser Form FHA-213C or other necessary instrument to convey all of the right, title, and interest of the Government and the borrower.

(2) Repossessed property may be sold at private sale for cash for its present market value if agreed to by the borrower by the execution and delivery of Form FHA-213B, "Bill of Sale 'B' (Sale by Private Party)."

(3) Repossessed perishable property, such as certain fresh fruits and vegetables, in immediate danger of deterioration or spoilage will be sold at private sale for the best cash price obtainable. If requested by the purchaser, Form FHA-213C will be executed and delivered to him.

(4) Repossessed property such as wheat, rye, oats, corn, cotton, and tobacco (but not livestock and machinery) may be sold at private sale for cash, provided such sales are authorized by the State Director. The price received must be in line with current market quotations for products of similar grade, type, or other recognized classification. If requested by the purchaser, Form FHA-213C will be executed and delivered to him.

(5) Repossessed property in instances other than those outlined in subparagraphs (1), (2), (3), and (4) of this paragraph may be sold for its present market value at private sale in those states where such method is authorized by the security instrument and is permissible legally. State Directors are authorized hereby to approve, or to delegate to County Supervisors authority to approve, the sale of such repossessed property at private sale under such circumstances.

(c) *Payment of costs and prior lienholders by voucher.* When expenses must be paid before the sale or if cash proceeds are not available from the sale of the property with which to pay costs referred to in § 371.32(a) or to pay prior lienholders, such costs or prior liens will be paid by invoice or Standard Form 1034 (Standard Form 1144, "Public Voucher for Advertising," for newspaper advertising), and the amount of such voucher will be charged to the respective borrower's account, except as limited by state law. No costs incident to the repossession and sale of security property should be incurred unless they can be charged to the borrower's account, and in no event will any such costs be borne by the Government. Each invoice or voucher will be approved by the County Supervisor, signed by the payee or supported by signed invoices, and submitted to the Finance Office for payment. Invoices or vouchers in payment of such costs as custody, care, storage, harvesting, and marketing will be supported by the original and one copy of Form FHA-210 or Form FHA-211, "Agreement for Cultivating, Harvesting, and Delivering Crops."

§ 371.32 Accounting for proceeds of liquidation sales.

This section applies to distributing and receipting for proceeds of nonjudicial liquidation sales; that is, liquidation sales conducted under the power of sale in lien instruments or under Form FHA-209, Form FHA-217, or Form FHA-851.

(a) *Order of priorities.* The proceeds of such sales will be distributed in the following order of priority except that if other Federal agencies hold liens on the security property, the case will be referred to the Attorney in Charge for advice as to the order of distribution.

(1) To pay expenses of sale and costs of tests and inspections of livestock and costs of the transportation, custody, care, storage, harvesting, marketing, and other costs and expenses chargeable to the borrower, including amounts already paid by the Government and charged to the borrower's account.

(2) To pay liens which under state law are prior to those of the Farmers Home Administration, in accordance with their state law priorities, except that non-Federal tax liens on security property will be paid only when demand is made by tax collecting officials before distribution of the sale proceeds, and the sale proceeds will not be used to pay real estate taxes or substantial amounts of taxes against nonsecurity personal property.

NOTE: This authority for payment of non-Federal tax liens applies to pending cases in which final distribution of the sale proceeds has not yet been made as well as to future cases. If action is threatened or taken by the sheriff or other official to collect taxes not authorized above to be paid out of the security property or the sale proceeds, the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible disinterested party an amount equal to the tax claim, pending determination of the priority rights thereto. When such action is taken, or such an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to the Attorney in Charge.

(3) To pay rent for the current crop year out of the proceeds from the sale of other than basic security property provided there are no liens junior to the Farmers Home Administration's other than the landlord's lien, if any, and the borrower consents in writing to such payment. However, if an Emergency loan was made for the current year pursuant to Part 381 of this chapter, cash or standing rent for cropland used for the production of cash crops will be paid only after the amount due or falling due on that loan has been paid.

(4) To pay debts owed the Farmers Home Administration which are secured by liens on the property sold.

(5) To pay liens junior to those of the Farmers Home Administration in accordance with their priorities on the property sold, including any landlord's liens for rent unless such liens have already been paid under subparagraph (2) or (3) of this paragraph.

(6) To pay rent for the current crop year, if the borrower consents in writing to such payment and if such rent has not already been paid as provided in subparagraph (2), (3), or (5) of this paragraph.

(7) To pay on any other debts owed to the Farmers Home Administration which are unsecured or are secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part or all of the remainder of such funds by the borrower for other necessary purposes, provided the other Farmers Home Administration debts are adequately secured or the borrower makes satisfactory arrangements to pay the other debts from income or other sources, which payments likely can be depended upon.

(8) To pay the remainder to the borrower.

(b) *Receipts.* Receipts will be obtained for all amounts paid out of the sale proceeds. Form FHA-37, "Receipt for Payment," will be issued only for the total amount remitted to Farmers Home Administration for credit to the borrower's indebtedness. Such amount will be scheduled to the Finance Office in accordance with Part 362 of this chapter.

§ 371.33 Handling civil and criminal cases.

All cases in which court actions to effect collection or to enforce the rights of the Government under any of the security instruments are recommended, as well as actions relating to apparent violations of Federal criminals statutes, will be forwarded to the Attorney in Charge for submission to the appropriate United States Attorney.

(a) *Actions on cases referred to the Attorney in Charge.* When a case is referred to the Attorney in Charge, the State Director will notify the County Supervisor and the Finance Office of the referral. After notice of the referral is received by the County Supervisor, no collection or security servicing action will be taken except upon specific instructions from the State Director or the Attorney in Charge. However, when the borrower voluntarily proposes to make a payment on his account, the County Supervisor will receive the collection in accordance with established procedure unless he has received notice that the debt has been accelerated or that the case has been referred to the United States Attorney. The County Supervisor will immediately notify the State Director by memorandum, with a copy sent to the Attorney in Charge, of any such collections received.

(b) *Actions on cases referred to the United States Attorney and on judgment cases (including third-party judgments).* The Attorney in Charge will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to the United States Attorney, a judgment (including third-party) is obtained, or a case is otherwise disposed of. After notice has been received that a case has been referred to the United States Attorney or that a judgment has been obtained, no action will be taken by the County Supervisor except upon specific instructions from the State Director, the Attorney in Charge, or the United States Attorney.

(1) If such a debtor proposes to make a payment, the payment will not be accepted, but an offer will be made to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the appropriate United States Attorney. In such a case the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(2) Collection items received through the mail from such a debtor or from other sources to be applied to such accounts will be forwarded through the Attorney in Charge to the appropriate United States Attorney. Form FHA-37 will not be issued in any case in which payment is made on a judgment account, or on an account which is in the hands of the United States Attorney. The

debtor will be informed in writing by the County Supervisor of the disposition of the amount received and that payments in the future should be made to the United States Attorney at a given address.

(5 U.S.C. 310, 316)

§ 371.34 Care and disposition of acquired security property.

The County Supervisor or the Assistant County Supervisor will make immediate arrangements for the care and storage of acquired security property in the same manner as for repossessed property. Acquired security property may not be left with a custodian under a custody agreement executed prior to its acquisition by the Government. A new custody agreement will be executed on Form FHA-210 for the care of such property. Acquired security property will be disposed of as expeditiously as possible, but may not be held more than 120 days, except upon the approval of the State Director in individual situations. Form FHA-210 will contain a statement as to the number of days during which the property will be cared for. Charges for the care, custody, transportation, and sale of such property, including any necessary tests and inspections of livestock, will be paid by the Government by means of Standard Form 1034 or certified invoice approved by the County Supervisor.

(a) *Disposition.* The County Supervisor is authorized to sell acquired security property for the best cash price obtainable at public auction or by privately negotiated sale after giving public notice of such sale in accordance with the provisions of § 371.31(a)(1)(ii), except that public notice must always be given and Form FHA-212A, "Notice of Sale," will be used for private sales. Determination of the type of sale to be held will be based on the prospects of obtaining the highest net return to the Government. Loans may be used in accordance with Farmers Home Administration regulations to purchase such property.

(1) *Transferring title to purchaser.* Title to acquired security property will be transferred to the purchaser, at the time the cash purchase price is paid, by execution and delivery of Form FHA-213A, "Bill of Sale 'A' (Sale of Government Property)."

(2) *Reporting sales of acquired security property.* Form FHA-655, "Invoice," will be prepared at the time of sale.

(3) *Transmitting payments received from sale of acquired security property.* Any form of payment that is acceptable as a payment on indebtedness due the Farmers Home Administration may be accepted in payment for acquired security property. Such payments will be scheduled in accordance with Part 362 of this chapter. Form FHA-37 will not be issued for funds received from the sale of acquired security property.

(7 U.S.C. 1017)

§ 371.35 Reports of inventory transactions; acquired security property.

County Supervisors will prepare inventory reports of acquired Government and Corporation security property and reports of acquisitions and dispositions pertaining thereto on Form FHA-658, "Report of Inventory Transactions." Property lost through death, spoilage, depreciation, or otherwise, will be reported on Form FHA-708, "Statement of Loss of Property." If the property was in the hands of a custodian at the time of loss, the custodian should sign Form FHA-708. Form FHA-708 will show the item number and book value of each item.

§ 371.36 Bankruptcy and insolvency.

If a borrower becomes involved as a debtor in proceedings under any State or Federal bankruptcy or insolvency law, the County Supervisor will promptly report the facts and forward the borrower's case files and other pertinent information and documents to the State Director for preparation of a proof of claim, if necessary. The County Supervisor will keep the State Director informed of further developments in the case, but will take no other action unless directed to do so by the State Director or the Attorney in Charge.

(a) *Proof of claim.* If the debtor has any assets out of which a collection could be made, the State Director will prepare and execute a proof of claim covering all indebtedness to the Farmers Home Administration except any judgments obtained by a United States Attorney. The State Director will send to the Attorney in Charge the executed proof of claim on Form FHA-280, "Proof of Claim of the United States of America Entitled to Priority of Payment," or other form approved by the Attorney in Charge, together with attachments required by the Attorney in Charge, for filing with the proper official. A proof of claim on an insured loan will not be executed or filed until the note has been assigned to the Government. The State Director, upon advice from the Attorney in Charge will instruct the County Supervisor concerning any actions to be taken by him with respect to meetings of creditors.

(b) *Unsecured claims—Government's priority.* Under the National Bankruptcy Act, after payment of fees and costs, unsecured claims of the United States (including State Rural Rehabilitation Corporation claims under 2(f) agreements and the amount of any claim in excess of any security therefor), with interest to the date of filing the petition in bankruptcy, are entitled to priority of payment over unsecured claims of other creditors.

(c) *Security released to Farmers Home Administration—liquidation—continuation with borrowers.* Ordinarily, when the value of security does not exceed the Farmers Home Administration liens and any prior liens against it, an effort will be made to get the security released to Farmers Home Administration. When security is released to Farmers Home Administration, it will be liquidated in accordance with this subpart if chattel security, or in accordance with Subpart A of Part 372 of this chapter if real estate security, unless the State Director, upon recommendation of the County Supervisor, approves continuation with the borrower. If the property is liquidated, the proceeds will be applied first to the interest accrued to the date of the filing of the petition in bankruptcy and then to the principal of the debt, and if there are additional proceeds, to the interest accrued from the date of the filing of the petition in bankruptcy to the date of the payment. The State Director may permit the borrower to continue with the loan and retain the security if he determines that the security property should not be liquidated under the liquidation policy applicable to the type of loan involved.

(1) When continuation with a borrower is approved, he will be required to execute a new promise to pay (on a form prepared by the Attorney in Charge) all his Farmers Home Administration indebtedness which is secured by the property released to Farmers Home Administration in accordance with the terms of the existing instrument(s) evidencing such indebtedness. The new promise to pay will be executed by the borrower and a copy will be given to him. The borrower also will be required to execute any security or other instruments deemed necessary by the Attorney in Charge. A new promise to pay and other required instruments will be executed as soon as possible after release of the security to the Farmers Home Administration and the borrower's adjudication in bankruptcy, unless, under State law the new promise to be effective must be made after discharge in bankruptcy.

(11 U.S.C. 93, 104, 31 U.S.C. 191)

§ 371.37 Deceased borrowers.

If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, or administrator, if any, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

(a) *Probate or administration proceedings*—(1) *Institution of probate or administration proceedings.* Generally, probate or administration proceedings are instituted by relatives or heirs of the deceased or creditors other than Farmers Home Administration. Ordinarily, Farmers Home Administration will not institute probate or administration proceedings because of the problems of designation of an administrator or other similar official, posting his bond, and payment of costs. If probate or administration proceedings are instituted by other parties, or by the United States Attorney at the request of Farmers Home Administration, and any security is to be thereafter liquidated by Farmers Home Administration instead of by the administrator or executor or other similar official, the liquidation will be accomplished in accordance with the advice of the Attorney in Charge.

(2) *Filing a proof of claim.* When a proof of claim is to be filed, it will be prepared by the State Director and transmitted for filing in the manner directed by the Attorney in Charge. If an insured loan is involved, the proof of claim will not be prepared until the note has been assigned to the Government. A proof of claim will be filed in any case

in which probate or administration proceedings are instituted, unless:

(i) After considering liens and priority rights of Farmers Home Administration and other parties, costs of administration and charges against the estate, there are no assets in the estate which could be reached by Farmers Home Administration except its security and Farmers Home Administration will liquidate the security, if necessary to collect the Farmers Home Administration claim, by foreclosure or otherwise, or

(ii) Continuation with a survivor or transfer to and assumption by another party is approved, and either the Farmers Home Administration debt is fully secured or the amount of the debt in excess of the value of the security which could be collected by filing a claim is obtained in cash or additional security.

(3) *Priority of claims*—(i) *Secured claims.* Each secured claim will take its relative lien priority to the extent of the value of the property serving as security for it. Secured claims include those secured by mortgages, deeds of trust, landlord's contractual liens, and other contractual liens or security instruments executed by the borrower on real or personal property. However, tax, judgment, attachment, garnishment, laborer's, mechanic's, materialmen's, landlord's statutory liens, and other noncontractual lien claims may or may not constitute secured claims. Therefore, if any claims referred to in the preceding sentence are allowed as secured claims and the Farmers Home Administration claim is not paid in full, the advice of the Attorney in Charge will be obtained as to whether they constitute secured claims and as to their relative priority.

(ii) *Unsecured claims.* The remaining assets of the estate, including any value of security property in excess of the amount of the secured claims against it, are to be applied first to payment of costs of administration and charges against the estate, and second to unsecured debts of the deceased. If the total of such remaining assets in the estate being administered is insufficient to pay all costs of administration, charges against the estate, and unsecured debts of the deceased, unsecured claims are payable out of such remaining assets in the following order of priority:

First. Costs of administration and charges against the estate, unless under state law they are payable after the Government's unsecured claims. (Such costs and charges include costs of administration of the estate, allowable funeral expenses, allowances of minor children and surviving spouse, and dower and curtesy rights.)

Second. Government's unsecured claims.

(b) *Withdrawal of claim.* When necessary to permit closing of an estate in which a Farmers Home Administration claim has been filed, the United States Attorney may be requested to withdraw the claim upon receipt of cash payment or additional security of a value comparable to the amount of the debt in excess of the value of existing security which it is estimated could be recovered from the estate, provided that withdrawal of the claim will not affect the Government's rights under existing notes or security instruments.

(c) *Liquidation when no probate or administration proceedings and no continuation with survivor or transfer and assumption.* When probate or administration proceedings have not been instituted and continuation with a survivor or transfer to, and assumption by, another party will not be approved as provided in § 371.38, any chattel security will be liquidated in accordance with this subpart and any real estate security will be liquidated in accordance with Subpart A of Part 372 of this chapter as expeditiously as possible. In such liquidation cases if the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to the Farmers Home Administration, and other assets are available in the estate from which collection can be made, the State Director will request the Attorney in Charge to take appropriate action to effect collection.

(d) *Continuation with survivor.* When a surviving member of deceased borrower's family desires to continue with the farming operations, continuation may be approved subject to the following:

(1) *Survivor who is liable.* Any survivor who is liable for the indebtedness of the deceased borrower may continue with the loan provided he can comply with the obligations of the notes, other evidence of debt and chattel or real estate security instruments, and so long as liquidation is not necessary to protect the interest of the Farmers Home Administration. When a survivor who is liable for the indebtedness is to continue with the account, the account will be changed to the continuing survivor's name. Form FHA-97, "Assumption Agreement," will be executed and sent to the Finance Office when under state law the wife of a borrower who has signed the note cannot be held personally liable for the debt without assumption of liability after the borrower's death. In such a case, the account will not be reamortized and the terms of the note will remain the same unless the State Director determines otherwise.

(2) *Survivor who is not liable.* When a surviving member of the deceased borrower's family, not liable for the indebtedness, desires to continue with the farming operations and the loan, the State Director may approve the transfer of chattel security or real estate security, or both, to him and his assumption of the obligations secured by such property without regard to the personal eligibility of the transferee, subject to the following conditions:

(i) The transferee will continue the farming operations for the benefit of all or a part of the deceased borrower's family.

(ii) The transferee will assume the full amount of the unpaid balance of the secured Farmers Home Administration debts unless the market value of the property is less than such Farmers Home Administration debt plus any prior liens in which case he will assume that portion of such Farmers Home Administration debts which, when added to any prior liens, equals the present market value of the security as determined by the current market value appraisal and the recommendation of the County Committee.

(iii) The assumption agreement meets the repayment terms specified in § 372.13 (c) (2) (iii) of this chapter.

(iv) The State Director determines that the continuation with a survivor will not adversely affect the repayment of the loan and will accomplish the objectives for which the loan was made.

(3) *Considerations in continuing with survivor.* In determining whether to continue with a survivor, whether he is already liable or assumes the indebtedness, all pertinent factors will be taken into consideration including the following:

(i) Whether probate or administration proceedings have been or will be instituted and whether the filing of a claim on the Farmers Home Administration debt in such proceedings is necessary to protect the interests of the Farmers Home Administration.

(ii) Whether the survivor can continue with the loan on a sound basis.

(iii) Whether it is possible to make the necessary arrangements with the heirs, creditors, executors, administrators, and other interested parties to transfer title to the security property to the transferee and to avoid forced liquidation of the assets of the estate to the extent of making it impossible for the survivor to continue with the loan on a sound basis.

(4) *Vesting title in survivor.* If the continuation with a survivor, whether already liable or not, is approved, all steps necessary, short of foreclosure or litigation, will be taken to vest in the survivor full title to the security.

(5) *Release of liability.* Ordinarily, the deceased borrower's estate will not be released from liability for the indebtedness and the deceased borrower's notes and security instruments will not be satisfied or released until the debt has been paid in full, or settled under Part 364 of this chapter. Other obligors on the notes or other evidence of indebtedness will not be released from liability in connection with transfer to, or assumption by, a survivor without the prior concurrence of the National Office.

(6) *Docket preparation.* Transfers under subparagraph (2) of this paragraph shall be documented and processed in the same manner as transfers and assumptions under § 371.38.

(e) *Transfers to ineligibles.* No transfers or assumptions of deceased borrower's real estate or chattels, or both, shall be approved to a person ineligible under the requirements of § 372.13(c) (2) (ii) of this chapter, except as provided in paragraph (d) (2) of this paragraph, and except that the State Director may approve transfers of real estate or chattels, or both, of deceased borrowers to eligible or ineligible transferees other than such survivors only upon prior approval of the National Office.

(31 U.S.C. 191)

§ 371.38 Transfer and assumption of chattel security and debts.

Transfers and assumptions involving chattel security only may be made as provided in this section. Transfer of one or more accounts, all of which are secured by both chattels and real estate, will be accomplished in accordance with § 372.13 of this chapter. Continuation of loans with survivors of deceased borrowers, including assumption of indebtedness, is covered by § 371.37.

(a) *Transfers to eligibles.* The State Director may approve a transfer of chattel security to, and the assumption of, the chattel debt by a transferee who meets the eligibility requirements for transferees as set out in § 372.13(c)(2)(ii) of this chapter. In such cases the transferee will assume the full amount of the unpaid balance of the Farmers Home Administration debts secured by the chattels unless the present market value of the chattels is less than such debt(s) plus any prior lien(s), in which event he will assume that portion of such Farmers Home Administration debt(s), which, when added to the prior lien(s), equals the present market value of the chattels as determined by the County Supervisor.

(1) Ordinarily, the debt assumed will be repaid in accordance with the rates and terms of the existing note(s) or assumption agreements and any delinquency will be paid on or before the date the transfer is closed. However, if the County Supervisor determines that the transferee cannot pay the delinquency at the time the transfer is closed or cannot repay the loan within the remaining repayment period of the note, he may recommend and the State Director may approve the reamortization of the account for such period as may be necessary but not to exceed seven years from the date of closing of the transfer. The account(s) also will be reamortized whenever the transferor is ahead of schedule or prepaid.

(2) When the total amount of the Farmers Home Administration indebtedness is assumed by the transferee, it will be the policy to release the transferor from personal liability to the Government upon the County Committee's making the following memorandum certification: "The value of the security property of (names of all transferors) is not less than the indebtedness against it and in our opinion the transferors do not have any assets from which the Farmers Home Administration could make a substantial recovery. Therefore, we recommend that the transferors be released from personal liability upon assumption of the full indebtedness by the transferee." The transferor will not be released from liability if the full amount of the debt is not assumed.

(b) *Transfers to ineligibles.* The State Director may not approve a transfer to, or assumption by, a transferee who does not meet the eligibility standards described in § 372.13(c)(2)(ii) of this chapter without the prior concurrence of the National Office.

(1) An ineligible transferee generally will be required to assume all of the indebtedness secured by chattels or an amount substantially in excess of the present market value of the security less any prior liens if the security is worth less than the entire secured debt.

(2) An ineligible transferee will be required to make a minimum payment at the time of execution of the assumption agreement of at least 20 percent of the debt to be assumed, calculated before such payment. The balance of the Farmers Home Administration debt(s) will be scheduled for repayment in equal annual installments with interest at 5 percent per annum, within the shortest period consistent with the transferee's ability to pay, but not to exceed five years from the date of closing the transfer.

(3) The transferor will not be released from personal liability.

(c) *Release of liability.* When the transfer by assumption is being made to an eligible transferee in accordance with paragraph (a) of this section and the total amount of the Farmers Home Administration debt is assumed by the transferee, it will be the policy to release the transferor from personal liability to the Government upon the certification by the County Committee as contained in § 372.13(f)(5)(i) of this chapter with respect to a transferee who is assuming the full amount of the indebtedness. The transferor will not be released from liability if the full amount of the debt is not assumed or if the transferee is ineligible.

(d) *County Committee certification and recommendation.* No transfer or assumption under this paragraph will be approved unless the County Committee makes a certification on the memorandum statement form provided in § 372.13 of this chapter. The certification will be signed by at least two members of the Committee, dated, and made a part of the tranferee's County Office file.

(e) *Docket submission.* The County Supervisor will submit to the State Office the County Office file and the following:

(1) Statement of amount of indebtedness involved, description and statement of value of security, and statement of justification, including a plan of repayment.

(2) Form FHA-197, "Application for FHA Services."

(3) Transferee's plan of operation reflected on Form FHA-14, "Farm and Home Plan," or Form FHA-197A, "Operating Budget and Financial Statement," as appropriate.

(4) County Committee's certification regarding transfer.

(f) *Processing assumption agreements.* The assumption agreement will be executed on Form FHA-97. Additional security instruments will be obtained if required by the Attorney in Charge. Upon receipt of Form FHA-97, the Finance Office will establish an account in the name of the assuming transferee. If a collection is received from the assuming transferee after the assumption agreement is approved but prior to Finance's notification to the County Office, Form FHA-37 will be prepared in accordance with § 372.13(f)(3) of this chapter.

§ 371.39 Agricultural Stabilization and Conservation Service set-offs.

The Secretary's Order on set-offs authorizes the collection of debts owed to the Farmers Home Administration by set-off against amounts approved for payment to the debtor by Agricultural Stabilization and Conservation Committees.

(a) Recommendations for set-offs will be forwarded by the County Supervisor to the State Director. If the recommendation for set-off is approved, a letter will be written to the borrower stating that a request for a set-off has been made, together with the reasons for such action.

(b) The State Director may withdraw a request for set-off by giving notice to the Agricultural Stabilization and Conservation State Office at any time prior to the processing of set-off voucher. However, set-offs may be withdrawn only if the borrower pays his indebtedness in full or makes substantial payment on his debt or it is determined that future collections can be made through ordinary methods.

(c) If the account of the borrower for whom a request for set-off has been submitted is transferred to another Farmers Home Administration County Office jurisdiction, either within or outside the state, the State Director will notify the Agricultural Stabilization and Conservation State Office of the address of the Farmers Home Administration County Office to which the account has been transferred in order that any payments may be sent to such office. If the transfer is to another state, the transferring State Director will notify the receiving State Director that a request for set-off has been made and that he should give consideration to this fact in the servicing of the case, including the advisability of requesting a set-off in the state to which the borrower has moved.

(d) *Check delivery.* Set-offs will be made by means of checks or sight drafts drawn payable to the Farmers Home Administration and delivered to the County Supervisor. Such remittances will be receipted for and scheduled in accordance with Part 362 of this chapter, except that if the claim has been forwarded to the Attorney in Charge, the remittance will be sent to the Attorney in Charge and his instructions as to application will be followed.

(5 U.S.C. 22; Order of Acting Sec. of Agr. 23 F.R. 3757, 7 CFR Part 13)

§ 371.40 Releases and satisfactions.

Release and satisfaction necessary in connection with liquidation action will be executed in accordance with authorities contained in Subpart A of Part 371 of this chapter.

Dated: December 28, 1959.

MALCOLM H. HOLLIDAY, Jr.,
Acting Administrator,
Farmers Home Administration.

[F.R. Doc. 59-11149; Filed, Dec. 30, 1959; 8:46 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Milk Order 127]

PART 1027—MILK IN UPPER CHESAPEAKE BAY MARKETING AREA

Order Regulating Handling

AUTHORITY: §§ 1027.0 to 1027.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 1027.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Upper Chesapeake Bay, Maryland, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk and its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (i) receipts of producer milk (including such handler's own farm production), (ii) receipts of nonfederally regulated other source milk at a pool plant allocated to Class I, and (iii) receipts of Class I milk at a nonpool plant for which a payment is due pursuant to § 1027.62(d).

(b) *Additional findings.* (1) It is necessary in the public interest to make this order partially effective not later than January 1, 1960 and fully effective not later than February 1, 1960.

(2) The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued September 15, 1959 and the decision of the Assistant Secretary containing all the provisions of this order was issued November 20, 1959. This order will initiate a new regulatory program in this market. Therefore, it is necessary that the provisions other than those relating to prices and payments to producers and payments to the administrative and marketing service funds be placed in effect prior to the effective date of such pricing and payment provisions so that handlers may have opportunity to make necessary adjustments in their operations and accounting procedure to conform to all provisions of the order. In view of the foregoing, it is hereby found and determined that good cause exists for making this order partially effective January 1, 1960 and fully effective February 1, 1960, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of this order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Upper Chesapeake Bay, Maryland, marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1027.1 General definitions.

(a) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

(b) "Department" means the United States Department of Agriculture.

(c) "Upper Chesapeake Bay marketing area", hereinafter referred to as the "marketing area" means all territory situated within the corporate limits of the city of Baltimore, the town of Laurel in Prince Georges County; the counties of Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Harford, Howard, Kent, Queen Annes, Somerset, Talbot, Wicomico, Worcester and that portion of Calvert County lying north of a line beginning at the western terminus of Maryland State Highway 507, continuing easterly along said highway to its intersection with Maryland State Highway 2, continuing northerly along said Highway 2, to its intersection with Maryland State Highway 263 and then easterly along said Highway 263 to its terminus at the Chesapeake Bay, all in the State of Maryland, together with all waterfront facilities connected therewith and including all territory within such boundaries occupied by Government (Federal, State or municipal) installations, institutions or other similar establishments.

(d) "Route" means a delivery (including any delivery by a vendor or disposition at a plant store or from a vending machine) of any Class I product to a wholesale or retail outlet, including a Federal, State or municipal establishment, but excluding any delivery to a plant.

§ 1027.2 Definitions of persons.

(a) "Person" means any individual, partnership, corporation, association, or other business unit.

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

(c) "Dairy farmer" means any person who produces milk which is delivered in bulk (tank or cans) to a plant.

(d) "Dairy farmer for other markets" means:

(1) Any dairy farmer, whose milk is received at a pool plant during any month of September through February but whose milk is diverted to a nonpool plant during the month on more than the number of days specified in paragraph (e)(1) of this section, and

(2) Except for the months of March through August 1960, any dairy farmer whose milk is received at a pool plant during the months of March through August from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received milk other than as producer milk during any of the preceding months of September through February.

(e) "Producer" means any dairy farmer, except a producer-handler or a dairy farmer for other markets, who produces milk which is received at a pool plant or is diverted to a nonpool plant during any month(s) of March through August or on not more than 8 days (4 days in the case of every-other-day delivery) during any month(s) of September through February: *Provided*, That the milk so diverted shall be deemed to have been received by the diverting handler at a pool plant at the location from which it was diverted.

(f) "Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(1) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(2) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

(g) "Handler" means any person (1) in his capacity as the operator of a pool plant; (2) in his capacity as the operator of a nonpool plant from which (i) Class I milk is disposed of on routes in the marketing area; or (ii) milk is shipped to a pool plant qualified pursuant to § 1027.3(b)(1); and (3) a cooperative association with respect to the milk of any producer which it causes to be diverted in accordance with the provisions of paragraph (e) of this section from a pool plant for the account of such cooperative association.

(h) "Pool handler" means any person in his capacity as the operator of a pool plant or a cooperative association qualified as a handler pursuant to paragraph (g)(3) of this section.

(i) "Producer-handler" means any person who operates a dairy farm and a plant from which Class I milk is disposed of on route(s) in the marketing area and who during the month received no milk from any source other than his own farm production and from pool plants: *Provided*, That the maintenance, care and management of the herd and other resources necessary to production, processing, packaging and distribution of the milk are the personal enterprise and personal risk of such person.

§ 1027.3 Definitions of plants.

(a) "Plant" means the land, buildings, surroundings, facilities and equipment operated by one or more persons, constituting a single operating unit or establishment for the receiving (other than transfer from one vehicle to another), processing or packaging of milk or milk products.

(b) "Pool plant" means a plant specified in subparagraph (1), (2) or (3) of this paragraph other than that of a producer-handler: *Provided*, That any plant qualified as a pool plant pursuant to subparagraph (2) of this paragraph in each of the months of September through February shall be a pool plant for the immediately following months of March through August unless the handler gives written notice to the market administrator on or before the first day of any such month(s) that the plant is a nonpool plant for the remaining months through August: *And provided further*, That any such plant specified in subparagraph (2) of this paragraph which was a nonpool plant during any month of September through February shall not be a pool plant in any of the immediately following months of March through August in which it is operated by the same handler, an affiliate of the handler or by any person who controls or is controlled by the handler: *And provided also*, That notwithstanding the preceding proviso, any plant which furnishes proof to the market administrator that it met the 50 percent shipping requirement during each of the months of September 1959 to February 1960 inclusive, shall retain automatically its pool plant status during the period March through August 1960 unless the operator of such plant notifies the market administrator that such status should be terminated.

(1) A plant which during the month disposes of not less than 10 percent of its total receipts of milk directly from dairy farms on routes as Class I milk in the marketing area and not less than 50 percent of such receipts as Class I milk both inside and outside the marketing area.

(2) A plant in any month of September through February in which not less than 50 percent, and in any month of March through August in which not less than 40 percent, of its receipts of milk from dairy farmers, is moved to a plant which disposes of not less than 10 percent of its receipts from dairy farms and from other plants on routes as Class I milk in the marketing area and not less than 50 percent of such receipts as Class I milk both inside and outside the marketing area: *Provided*, That in the case of a handler operating a pool plant qualified pursuant to subparagraph (1) of this paragraph and two or more plants approved by the appropriate health authority in the marketing area as a source of supply for such plant, such supply plants shall be considered as a unit (system) for purposes of plant qualification under this paragraph upon written notice to the market administrator by the handler designating the plants to be included and the period during which such designation shall apply. Such notice or notice of changes in designation shall be given on or before the first day of the first month to which such notice applies.

(3) A manufacturing plant, located in the marketing area, from which any fluid milk product is moved to a plant which is a pool plant pursuant to subparagraph (1) of this paragraph if during the month not less than 90 percent of its receipts from dairy farmers are from Baltimore City permit holders who are members of a cooperative association of which 70 percent or more of the members are producers whose milk is received at other pool plants.

(c) "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 1027.4 Definitions of milk and milk products.

(a) "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), concentrated milk, and (except eggnog, milk shake mix, ice cream mix, evaporated and plain or sweetened condensed milk or skim milk and sterilized products in hermetically sealed containers) any mixture in fluid form of cream and milk or skim milk containing less than 12 percent butterfat and 50 percent of the quantity by weight of any such mixture containing at least 12 percent but less than 18 percent butterfat.

(b) "Producer milk" means all skim milk or butterfat contained in milk received at a pool plant directly from producers, or diverted in accordance with the provisions of § 1027.2(e).

(c) "Other source milk" means all skim milk and butterfat contained in or represented by (1) receipts (including any Class II milk product produced in the handler's plant during a prior month) in a form other than as fluid milk products which are reprocessed, converted or combined with another product during the month, and (2) receipts from any source in the form of fluid milk products other than as producer milk or from pool plants and opening inventory.

(d) "Base milk" means milk received at a pool plant from a producer during any of the months of March through June which is not in excess of such producer's daily base computed pursuant to § 1027.63 multiplied by the number of days in such month on which such producer's milk was received at such pool plant: *Provided,* That with respect to any producer on every-other-day delivery, the days of nondelivery shall be considered as days of delivery for purpose of this paragraph and of § 1027.63.

(e) "Excess milk" means milk received at a pool plant from a producer during any of the months of March through June which is in excess of base milk received from such producer during such month.

MARKET ADMINISTRATOR

§ 1027.20 Designation.

The agency for the administration of this part shall be a "market administrator" selected by the Secretary. He shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1027.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 1027.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received pursuant to § 1027.88,

(1) The cost of his bond and the bonds of his employees,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 1027.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person, who after the date upon which he is required to perform such acts, has not made reports pursuant to § 1027.30 or payments pursuant to §§ 1027.80 through 1027.88;

(g) Submit his books and records to examination by the Secretary, and furnish such information and reports as the Secretary may request;

(h) Verify all reports and payments of each handler, by audit, if necessary, of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(i) Prepare and make available for the benefit of producers, consumers, and handlers, such general statistics and information concerning the operation of this part as do not reveal confidential information;

(j) On or before the date specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(1) The 5th day of each month, the Class I price computed pursuant to § 1027.50(a) for the current month, and the Class II price computed pursuant to § 1027.50(b) and the handler butterfat differentials computed pursuant to § 1027.51, both for the preceding month; and

(2) The 11th day of each month, the uniform price computed pursuant to § 1027.71, or the base and excess prices computed pursuant to § 1027.72 and the producer butterfat differential computed pursuant to § 1027.81, all for the preceding month; and

(k) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month.

(l) On or before March 1, 1960, and on or before February 20th of each year thereafter notify:

(1) Each cooperative association of the daily base established by each producer member of such association;

(2) Each nonmember producer of the daily base established by such producer.

REPORTS, RECORDS AND FACILITIES

§ 1027.30 Reports of receipts and utilization.

(a) On or before the 7th day after the end of each month, or not later than the 8th day after the end of the month if the report required by this paragraph is delivered in person to the office of the market administrator, each cooperative association in its capacity as a handler and each handler with respect to each of his pool plants shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in, (i) receipts of producer milk (including such handler's own production), (ii) receipts of fluid milk products from other pool plants and (iii) receipts of other source milk;

(2) Inventories of fluid milk products on hand at the beginning and end of the month; and

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph.

(b) Each handler operating a nonpool plant from which fluid milk products are disposed of on routes as Class I milk in the marketing area shall, unless otherwise directed by the market administrator, report for such plant at the same time and in the same manner prescribed for a pool handler in paragraph (a) of this section.

(c) Except as provided in paragraph (b) of this section each nonpool handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 1027.31 Other reports.

(a) Each pool handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the 20th day after the end of the month, for each of his pool plants, his producer payroll for such month, which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, (iii) the average butterfat content of such milk, and (iv) the net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) On or before the first day other source milk is received at his pool plant(s) in the form of any fluid milk product; his intention to receive such product and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) Such other information with respect to receipts and utilization of butterfat and skim milk as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant location involved.

(c) Each pool handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to § 1027.80(b) shall on or before the 11th day after the end of each month report to such cooperative association concerning each producer-member of such cooperative association from whom he received milk during the month as follows:

(1) The name, address and code number, if any;

(2) The total deliveries and the number of days on which delivery was made;

(3) The average butterfat test of the milk delivered; and

(4) The nature and amount of any deductions to be made in payments due such producer.

(d) Each pool handler dumping skim milk pursuant to § 1027.41(b)(3) shall give the market administrator during normal duty hours, not less than three hours advance notice of intention to make such disposition and of the quantities of skim milk involved.

§ 1027.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk and milk products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all items in inventory at the beginning and end of each month required to be reported pursuant to § 1027.30(a)(2); and

(d) Payments to producers and cooperative associations, including any deductions, and the disbursement of money so deducted.

§ 1027.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

Classification of Milk

§ 1027.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month at pool plants and which are required to be reported pursuant to § 1027.30 shall be classified by the market administrator in accordance with the provisions of §§ 1027.41 through 1027.46.

§ 1027.41 Classes of utilization.

Subject to the conditions set forth in §§ 1027.42 to 1027.46 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products except as provided in paragraph (b) (2) and (3) of this section, and

(2) Not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than those designated as Class I milk pursuant to paragraph (a)(1) of this section; (2) disposed of for livestock feed; (3) contained in the skim dumped if the conditions of § 1027.31(d) are met by the handler; (4) contained in inventory of fluid milk products on hand at the end of the month; (5) in actual plant shrinkage not to exceed two percent of skim milk and butterfat, respectively, in producer milk; and (6) in shrinkage of other source milk.

§ 1027.42 Shrinkage.

The market administrator shall allocate shrinkage of each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively; and

(b) Allocate the resulting amounts pro rata to skim milk and butterfat, respectively, in receipts of producer milk and other source milk.

§ 1027.43 Responsibility of handlers and the reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise; and

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1027.44 Transfers.

Skim milk or butterfat disposed of during the month from a pool plant shall be classified:

(a) As Class I milk if transferred in the form of any fluid milk product to the pool plant of another handler unless utilization as Class II milk is claimed in the reports submitted for both pool plants for the month to the market administrator pursuant to § 1027.30(a): *Provided*, That the skim milk or butterfat so classified as Class II milk shall be limited to the amount thereof remaining in Class II milk in the transferee plant after the allocation of other source milk pursuant to § 1027.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further*, That if either or both pool plants have receipts of other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk at both plants.

(b) As Class I milk if transferred or diverted in the form of any fluid milk product to a producer-handler.

(c) As Class I milk if transferred in packaged form to a nonpool plant in the form of any fluid milk product.

(d) As Class I milk if transferred or diverted in bulk in the form of any fluid milk product to a nonpool plant, (other than the plant of a producer-handler) to the extent of the disposition of skim milk and butterfat, respectively, from such plant on routes as Class I milk in the marketing area: *Provided*, That any remaining amount of such transfer or diversion shall be allocated to the highest utilization remaining in the transferee plant after the prior assignment of receipts at such plant from dairy farmers who the market administrator determines constitute its regular source of supply.

(e) Except as provided in paragraph (d) of this section as Class I milk if transferred or diverted in bulk in the form of any fluid milk product to a nonpool plant, located less than 300 miles from the City Hall in Baltimore, Maryland, unless (1) the handler claims Class II utilization in his report submitted pursuant to § 1027.30(a); (2) the operator of the transferee plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification; and (3) an equivalent Class II utilization was available in such plant after the assignment of receipts at such plant from other Federal order plants in the class to which assigned under such other order(s): *Provided*, That if upon inspection of the records of such plant it is found that an equivalent utilization of skim milk and butterfat was not available the remaining pounds shall be classified as Class I.

(f) As Class I milk if transferred or diverted in bulk in the form of any fluid milk products to a nonpool plant located more than 300 miles from the City Hall in Baltimore, Maryland.

§ 1027.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization submitted pursuant to § 1027.30(a) for each pool plant of each handler and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk for such handlers: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1027.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1027.45, the market administrator shall determine the classification of producer milk received at each pool plant as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk in producer milk classified pursuant to § 1027.41(b)(5);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received during the month in a form other than fluid milk products;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of any fluid milk product from plants which are not fully subject to the pricing provisions of another order issued pursuant to the Act;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk in bulk receipts in the form of any fluid milk product from plants which are fully subject to the pricing provisions of another order issued pursuant to the Act;

(5) Subtract from the pounds of skim milk remaining in Class II milk, in excess of the pounds of skim milk in inventory of fluid milk products on hand at the end of the month, the pounds of skim milk in inventory of such products on hand at the beginning of the month: *Provided,* That if the pounds of skim milk in such beginning inventory is greater than the remaining Class II milk utilization the difference shall be subtracted from the pounds of skim milk remaining in Class I milk;

(6) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in packaged fluid milk products received from fully regulated plants under the provisions of another order issued pursuant to the Act;

(7) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received from the pool plants of other handlers in the form of fluid milk products according to the classification determined pursuant to § 1027.44(a);

(8) Add to the remaining pounds of skim milk in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(9) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in each class in series beginning with Class II milk. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section; and

(c) Add the pounds of skim milk and the pounds of butterfat allocated to producer milk in each class computed pursuant to paragraphs (a) and (b) of this section and determine the weighted average butterfat content of each class.

MINIMUM PRICES

§ 1027.50 Class prices.

Subject to the provisions of §§ 1027.51 and 1027.52 each handler shall pay, at the time and in the manner set forth in § 1027.80 for each hundredweight of milk containing 3.5 percent butterfat received at his pool plant(s) during the month from producers or a cooperative association not less than the following prices per hundredweight for the respective quantities of milk in each class computed pursuant to § 1027.46.

(a) *Class I price.* During the first 18 months from the effective date of this part the price for Class I milk shall be $5.55 for the months of July through February and $5.10 for the months of March through June: *Provided,* That such price in any month shall be adjusted to reflect the deviation of the average of the Federal order Class I prices for the Philadelphia, New York and Chicago markets for such month from such average price in the corresponding month of 1958, as follows:

Three-market average deviation from corresponding month of 1958 (cents), plus or minus:	*Class I price adjustment (cents) plus or minus*
0–15	0
15.1–35	20
35.1–55	40
55.1–75	60
75.1–95	80

(b) *Class II price.* The price for Class II milk shall be the sum of the values of butterfat and skim milk computed as follows:

(1) *Butterfat.* Add all weekly quotations per 40-quart can of 40 percent sweet cream approved for Pennsylvania and New Jersey in the Philadelphia market as reported each week ending within the month by the Department, divide by the number of quotations, subtract $2.00, divide by 33.48, multiply by 3.5: *Provided,* That such butterfat value shall not be less than 3.5 times 120 percent of the average Grade A (92-score) butter price at New York as reported by the Department for the month for which payment is to be made less 17 cents;

(2) *Skim milk.* The average of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as reported for the period from the 26th day of the preceding month through the 25th day of the current month by the Department shall determine the skim values as follows:

Average price per pound of nonfat dry milk (spray and roller process)	*Skim value*
$0.0065 or below	
$0.066–$0.075	$0.075
$0.076–$0.085	.150
$0.086–$0.095	.225
$0.096–$0.105	.300
$0.106–$0.115	.375
$0.116–$0.125	.450
$0.126–$0.135	.525
$0.136–$0.145	.600
$0.146–$0.155	.675
$0.156–$0.165	.750
$0.166–$0.175	.825
$0.176–$0.185	.900
$0.186–$0.195	.975

§ 1027.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 1027.50 shall be increased or decreased, respectively, for each one-tenth of one percent butterfat content variation from 3.5 percent, by the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Add all weekly quotations per 40-quart can of 40 percent fresh sweet cream, approved for Pennsylvania and New Jersey, in the Philadelphia market as reported each week ending within the month by the Department, divide by the number of quotations and divide the resulting amount by 334.8: *Provided,* That if the result is less than the Class II differential determined pursuant to paragraph (b) in this section, such Class II differential shall also be applicable to Class I milk; and

(b) *Class II milk.* Divide by 35 the butterfat value determined pursuant to § 1027.50(b)(1).

§ 1027.52 Location differentials to handlers.

For that milk received from producers at a pool plant located 75 miles or more from the nearer of the City Hall in Baltimore or the Courthouse in Salisbury, Maryland, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I milk, the price specified in § 1027.50(a) shall be reduced 12 cents per hundredweight plus an additional 1.5 cents for each additional 10 miles or fraction thereof in excess of 75 miles: *Provided,* That for the purpose of calculating such location differential, products designated as Class I milk which are transferred between pool plants shall be assigned first to any remainder of Class II milk in the transferee plant after making the allocations prescribed in § 1027.46(a) (1) through (5) and the corresponding steps in § 1027.46(b) for such plant, such assignment to the transferor plant to be made in sequence beginning with the plant where the largest location differential is applicable.

§ 1027.53 Use of equivalent price or index.

If for any reason a price quotation or index required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price or index which is required.

APPLICATION OF PROVISIONS

§ 1027.60 Producer-handler.

Sections 1027.40 through 1027.46, 1027.50 through 1027.52, 1027.62 through 1027.64, 1027.70 through 1027.72, 1027.80 through 1027.89 shall not apply to a producer-handler.

§ 1027.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be considered as a nonpool plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) Any plant qualified pursuant to § 1027.3(b) (1) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless a greater volume of Class I milk is disposed of from such plant on routes in this marketing area than in a marketing area pursuant to such other order.

(b) Any plant qualified pursuant to § 1027.3(b) (2) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the first proviso in § 1027.3(b) for each month during the preceding September through February.

§ 1027.62 Payments on other source milk.

On or before the 13th day after the end of each month, handlers shall make payments to producers through the producer-settlement fund as follows:

(a) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (2) and (b) shall make payment on the quantity so allocated at the difference between the Class II price and the Class I price applicable at the location of his pool plant qualified pursuant to § 1027.3 (b) (1).

(b) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (3) and (b) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at the location of the nearest nonpool plant(s) (as determined by the application of the location differential rate pursuant to § 1027.52) from which an equivalent amount of such other source milk was received.

(c) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (4) or (6) and (b), which milk was not classified and priced as Class I milk under such other Federal order, shall make payment on the quantity of such milk at the difference between the Class I price and the Class II price applicable at the location of the nearest other Federal order plant(s) (as determined by the application of the location differential rate presented in § 1027.52) from which an equivalent amount of such other source milk was received.

(d) Each handler operating a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the Act, and from which Class I milk is disposed of on routes in the marketing area during the month, shall make payment on the quantity of skim milk and butterfat so disposed of which is in excess of his receipts of skim milk and butterfat, respectively, classified and priced as Class I milk under this or any other Federal order at the difference between the Class I price and the Class II price applicable at the location of such plant.

(e) Each handler operating a nonpool plant which is subject to the classification and pricing provisions of another order issued pursuant to the Act, and from which Class I milk is disposed of on routes in the marketing area during the month shall make payment on any quantity of skim milk and butterfat so disposed of which was not classified and priced as Class I under such other order, at the difference between the Class I and Class II price applicable at the location of such plant.

§ 1027.63 Computation of base for each producer.

For each of the months of March through June of each year the market administrator shall compute a base for each producer as follows, subject to the rules set forth in § 1027.64:

(a) Divide the total pounds of milk received by a pool handler(s) from such producer during the months of July through December immediately preceding by the number of days of such producer's delivery in such period, but not less than 154 days: *Provided*, That for purposes of determining bases to be effective during the March–June period 1960, records of receipts at plants and records of the cooperative associations satisfactory to the market administrator, shall be used for the period July 1 through December 1959: *And provided further*, That in the case of a producer on every-other-day delivery, the days of nondelivery shall be considered days of delivery for purposes of this section.

§ 1027.64 Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base computed pursuant to § 1027.63 may be transferred in its entirety upon written notice to the market administrator on or before the last day of the month of transfer, but only if a producer sells, leases or otherwise conveys his herd to another producer and it is established to the satisfaction of the market administrator that the conveyance of the herd was bona fide and not for the purpose of evading any provision of this part;

(b) If a producer operates more than one farm, each delivering milk to a pool plant, he shall establish a separate base with respect to producer milk delivered from each such farm.

(c) Only one base shall be allotted with respect to milk produced by one or more persons where the herd, land, buildings, and equipment used are jointly owned or operated: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of an application signed by all joint holders or their heirs, or assigns;

§ 1027.70 Computation of the value of producer milk for each handler.

For each month, the market administrator shall compute the value of producer milk for each pool handler as follows:

(a) Multiply the pounds of producer milk in each class computed pursuant to § 1027.46 by the applicable class price and total the resulting amounts.

(b) Add the amount of any payments due from such handler pursuant to § 1027.62 (a), (b) and (c).

(c) Add the amounts computed by multiplying the pounds of "overage" deducted from each class pursuant to § 1027.46 (a) (9) and (b) by the applicable class price.

(d) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month less allowable shrinkage allocated pursuant to § 1027.46 (a) (1) and (b) in such month, or the hundredweight of milk subtracted from Class I pursuant to § 1027.46 (a) (5) and (b) for the current month, whichever is less;

(e) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of milk allocated to Class I pursuant to § 1027.46 (a) (5) and (b) for the current month which is in excess of (1) the hundredweight of milk for which an adjustment was made pursuant to paragraph (d); and (2) the hundredweight of milk assigned to Class II pursuant to § 1027.46 (a) (4) and (b) for the previous month and which was classified and priced as Class I under the other Federal order; and

(f) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1027.71 Computation of the uniform price.

For each of the months of July through February, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content, f.o.b. market as follows:

(a) Combine into one total the net obligations computed pursuant to § 1027.70 for all handlers who made reports prescribed in § 1027.30(a) for the month who were not in default of payments pursuant to § 1027.84 for the preceding month;

(b) Subtract, if the weighted average butterfat content of producer milk in paragraph (a) is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the producer butterfat differential computed pursuant to § 1027.81 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the sum of deductions to be made from producer payments for location differentials pursuant to § 1027.82;

(d) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) in this section; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section.

§ 1027.72 **Price for base milk and excess milk.**

For each of the months of March through June the price for base milk and excess milk of 3.5 percent butterfat content, f.o.b. market, shall be as follows:

(a) The price for excess milk shall be the Class II price computed pursuant to § 1027.50(b); and

(b) The price for base milk shall be the price computed by the market administrator as follows:

(1) Make the same computations as required pursuant to § 1027.71(a) through (d);

(2) Subtract from the resulting value an amount computed by multiplying the total hundredweight of excess milk by the excess price pursuant to paragraph (a) in this section;

(3) Divide the value obtained pursuant to subparagraph (2) in this paragraph by the total hundredweight of base milk; and

(4) Subtract from the resulting amount not less than 4 cents nor more than 5 cents.

PAYMENTS

§ 1027.80 **Time and method of payment.**

(a) Except as provided in paragraph (b) of this section each pool handler on or before the 15th day after the end of each month shall make payment to each producer for milk which was received from such producer during the month at not less than the uniform price computed pursuant to § 1027.71 for the months of July through February and at not less than the price for base milk computed pursuant to § 1027.72(b) with respect to base milk received from such producer, and not less than the excess price determined pursuant to § 1027.72(a) for excess milk received from such producer for the months of March through June subject to the following adjustments: (1) The butterfat differential computed pursuant to § 1027.81, (2) less the location differential computed pursuant to § 1027.82, and (3) less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1027.85 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator, an amount not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) In the case of milk received by a handler from a cooperative association in its capacity as a handler such handler shall on or before the day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler.

§ 1027.81 **Producer butterfat differential.**

In making payments pursuant to § 1027.80 (a) or (b), the uniform prices and the price for base and for excess milk shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to § 1027.51 (a) and (b) weighted by the pounds of butterfat in producer milk in each class and rounded to the nearest full cent.

§ 1027.82 **Location differential to producers.**

In making payments to producers or to a cooperative association pursuant to § 1027.80(a) and in making payment for base milk pursuant to § 1027.80(b) a handler shall deduct with respect to all such milk received at pool plants located 75 miles by shortest highway distance from the nearer of the City Hall, Baltimore, Maryland, or the Courthouse, Salisbury, Maryland, as determined by the market administrator, 12 cents per hundredweight plus 1.5 cents for each additional 10-mile distance, or fraction thereof, which such plant is located from such point.

§ 1027.83 **Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1027.62, 1027.84 and 1027.86 and out of which he shall make all payments pursuant to §§ 1027.85 and 1027.86; *Provided,* That the market administrator shall offset any such payment due to any handler against payment due from such handler.

§ 1027.84 **Payments to the producer-settlement fund.**

On or before the 13th day after the end of each month, each handler, including a cooperative association which is a handler, shall pay to the market administrator for payment to producers through the producer-settlement fund the amount by which the net pool obligation of such handler is greater than the sum required to be paid producers by such handler pursuant to § 1027.80 (a) and (b).

§ 1027.85 **Payments out of the producer-settlement fund.**

On or before the 13th day after the end of the month, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid producers by such handler pursuant to § 1027.80 (a) and (b) is greater than the net pool obligations of such handler: *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1027.86 **Adjustment of accounts.**

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1027.87 **Marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers for milk (other than milk of his own production) pursuant to § 1027.80(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 18th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 1027.80(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

§ 1027.88 **Expense of administration.**

As his pro rata share of the expense of administration of this part, each handler, including any cooperative association which is a handler, shall pay to the market administrator on or before the 18th day after the end of the month, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe for each hundredweight of skim milk and butterfat contained in (a) producer milk (including such handler's own farm production), (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1027.46(a) (2), (3) and (b), or (c) Class I milk for which a payment is due pursuant to § 1027.62(d).

§ 1027.89 **Termination of obligations.**

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (a) and (c), terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin until the first day of the month following the month during which all such books and records pertaining to such obligations are made available to the market administrator or his representatives;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1027.90 **Effective time.**

The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 1027.91.

§ 1027.91 **Suspension or termination.**

The Secretary may suspend or terminate this part or any provision of this part, whenever he finds that this part or any provision of this part, obstructs, or does not tend to effectuate the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

§ 1027.92 **Continuing obligations.**

If under the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1027.93 **Liquidation.**

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If the liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1027.100 **Agents.**

The Secretary may by designation in writing name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1027.101 **Separability of provisions.**

If any provision of this part, or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C., this 28th day of December 1959, to be effective as follows:

Sections 1027.0 through 1027.22(i), §§ 1027.30 through 1027.46, § 1027.60 and §§ 1027.90 through 1027.101 shall be effective on and after January 1, 1960 and all of the remaining provisions shall be effective on and after February 1, 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59-11145; Filed, Dec. 30, 1959; 8:46 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 165; Civil Air Regulations Amdt. 60-14A]

PART 60—AIR TRAFFIC RULES

Definition of Control Areas; Extension of Effective Date

Draft Release 59-16, published in the FEDERAL REGISTER on November 3, 1959, (24 F.R. 8951) gave notice that the Federal Aviation Agency proposed to extend the mandatory effective date of Civil Air Regulations Amendment 60-14 (24 F.R. 6) from January 1, 1960, to July 1, 1960.

The reasons for the postponement of the amendment were set forth in detail in the draft release. Interested persons have been afforded an opportunity to comment and consideration has been given to all matter presented. Comments received from air carrier organizations and the military services either endorsed the proposal, or voiced no objection thereto. Many of the comments received from organizations and persons associated with general aviation were adverse to the postponement. However, as stated in the draft release, the implementation of the amendment is of such magnitude that additional time must be provided to complete the studies regarding the problems of implementation, as well as to execute the associated airspace and charting actions.

In consideration of the foregoing, Civil Air Regulations Amendment 60-14 (24 F.R. 6) is hereby amended by changing the mandatory effective date of January 1, 1960, appearing in the enacting clause of that amendment, to read July 1, 1960.

(Secs. 313(a), 307(a), 307(c); 72 Stat. 752, 749, 49 U.S.C. 1354, 1348)

Issued in Washington, D.C., on December 24, 1959.

E. R. QUESADA,
Administrator.

[F.R. Doc. 59-11138; Filed, Dec. 30, 1959; 8:45 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER D—AIRPORT REGULATIONS

[Reg. Doc. 130; Amdt. 31]

PART 550—FEDERAL AID TO PUBLIC AGENCIES FOR DEVELOPMENT OF PUBLIC AIRPORTS

Miscellaneous Amendments

This amendment involves a revision of Subpart A of Part 550 for the purpose of reflecting changes in the relationship between Federal Aviation Agency Headquarters in Washington, D.C. and the Agency's field organizations. An additional minor editorial change is made.

Since this amendment involves changes which are minor in nature, and relates to public grants, benefits and contracts, compliance with the notice, procedure and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary.

Acting pursuant to authority vested in me by the Federal Airport Act, (60 Stat. 170) as amended, I hereby amend the Regulations of the Administrator (14 CFR, Part 550) as follows:

1. Paragraphs (g) through (p) of § 550.1 are relettered (h) through (q) respectively. Paragraphs (r) through (t) are relettered (s) through (u) respectively.

2. A new paragraph (g) is added to § 550.1 to read as follows:

(g) "Chief, Regional Airports Division" means the head of the FAA Regional Airports Division in Regions 1 through 4.

3. The present paragraph (q) of § 550.1 which defines "Regional Administrator" is deleted.

4. A new paragraph (r) is added to § 550.1 to read as follows:

(r) "Regional Manager" means the staff head of the FAA Regional Office in Region 5 and Region 6.

5. The words "Regional Administrator" wherever found in this Part are deleted and the words "Chief, Regional Airports Division, and the Regional Manager," are substituted therefor.

6. Section 550.6(b)(3) is hereby amended by adding in the first sentence the word "not" immediately following the words "Each Project Application submitted by sponsors each of which is."

This amendment shall become effective on January 1, 1960.

(Sec. 1–15, 60 Stat. 170–178, as amended, 49 U.S.C. 1101–1114)

Issued in Washington, D.C., on December 24, 1959.

E. R. QUESADA,
Administrator.

[F.R. Doc. 59-11136; Filed, Dec. 30, 1959; 8:45 a.m.]

[Reg. Docket No. 26; Amdt. 3]

PART 565—RELEASE OF AIRPORT PROPERTY FROM RESTRICTIONS OF SURPLUS AIRPORT PROPERTY INSTRUMENTS OF DISPOSAL

Miscellaneous Amendments

This amendment involves a revision of Part 565 for the purpose of reflecting the establishment of the Federal Aviation Agency by virtue of the Federal Aviation Act (72 Stat. 731), which Agency has succeeded to all the functions pertaining to surplus airport property instruments of disposal formerly performed by the former Civil Aeronautics Administration of the United States Department of Commerce. It is the further purpose of this amendment to make certain editorial changes and to add two new definitions under § 565.1.

Since this amendment is necessary to bring this part into accord with the provisions of the Federal Aviation Act and makes changes which impose no additional burden on any person, the Administrator finds that notice and public procedure are unnecessary and that this amendment may be made effective on less than 30 days notice.

Acting pursuant to the authority vested in me by section 305 of the Federal Aviation Act of 1958 (72 Stat. 749) as amended, and the Surplus Property Act of 1944 (58 Stat. 765) as amended, I hereby amend the regulations of the Administrator (14 CFR, Part 565) as follows:

1. Paragraph (a) of § 565.1 is amended by deleting the words "Administrator of Civil Aeronautics, Department of Commerce" and substituting the words "Administrator of the Federal Aviation Agency."

2. Paragraph (c) of § 565.1 is deleted and there is substituted a new paragraph (c) to read as follows:

(c) "Chief, Regional Airports Division" means the head of the FAA Regional Airports Division in Regions 1 through 4.

3. Paragraph (d) of § 565.1 is relettered as paragraph (e), and a new paragraph (d) is added to read as follows:

(d) "Regional Manager" means the staff head of the FAA Regional Office in Region 5 and Region 6.

4. The words "Regional Administrator" or "Regional Administrators" wherever found in this Part are deleted and the words "Chief, Regional Airports Division, and the Regional Manager," are substituted therefor.

5. The words "Administrator of Civil Aeronautics" wherever found in this part are deleted and the word "Administrator" is substituted therefor.

This amendment shall become effective January 1, 1960.

(Sec. 3, 63 Stat. 700, as amended; 50 U.S.C. App. 1622(b))

Issued in Washington, D.C. on December 24, 1959.

E. R. QUESADA,
Administrator.

[F.R. Doc. 59-11137; Filed, Dec. 30, 1959; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart A—Definitions and Procedural and Interpretative Regulations

STATEMENT OF POLICY WITH REFERENCE TO EFFECTIVE DATE OF FOOD ADDITIVES AMENDMENT

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 6(c), Public Law 85–929; 72 Stat. 1789; 21 U.S.C., note under section 342 (1958 amendment)), the following statement of policy is issued:

§ 121.85 Statement of policy with reference to effective date of food additives amendment.

(a) The food additives amendment to the Federal Food, Drug, and Cosmetic Act (72 Stat. 1785 et seq., 21 U.S.C. 342, 348) is scheduled to become fully effective on March 6, 1960. However, this date may be extended on a product-by-product basis for a time not to exceed 12 months "on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period."

(b) After this amendment becomes fully effective, any food in interstate commerce may contain a food additive as defined in section 201(s) of the act only if:

(1) The additive and its use, or intended use, conform to the terms of a regulation that provides for an exemption from the requirements of the food additives amendment for any food additive, and any food bearing or containing such additive because it is intended solely for investigational used by qualified experts; or

(2) There is in effect, and the additive and its use or intended use are in conformity with a regulation issued under section 409 prescribing the conditions under which such additive may be safely used.

(c) Many chemicals commonly used in foods are generally recognized as safe. A number of them have been listed in regulations in this chapter. However, there are food additives in common use that are not generally recognized as safe and for which tolerances must be established by regulation. It is not possible at this time to determine whether tolerances will be established for them before the food additives amendment will become fully effective. Manufacturers, distributors, users, and food-law enforcement officials need to know the status of these additives under the amendment prior to March 6, 1960, so that they will know whether they may be employed after that date.

(d) The Commissioner of Food and Drugs is prepared to consider requests for an extension of the effective date of the law, for specific additives. The following criteria, among others, will be used in evaluating and acting upon such requests:

(1) The effective date of the amendment can be extended for a specific additive only upon a finding, based on a study of the available facts about the additive and its toxicity, that such extension will involve no undue risks to the public health and that conditions exist that necessitate such extension.

(2) There should be evidence about the amounts of the additive present in the food and about its chronic toxicity before an extension is granted.

(3) Extensions will not be granted for a food additive if appropriate tests show

the production of cancer in test animals at any dosage level, nor will they be granted if such tests show alarming symptoms other than cancer in any dosage, unless experimental data show a level of feeding to test animals that is safe to the animal and provide a satisfactory margin of safety for the levels in the human diet.

(4) Where a regulation provides for the presence of an additive in certain foods at a given level, and the other criteria of this statement of policy are met, the effective date may be extended for other similar uses of the additive.

(5) Extension should be granted only for those uses of a food additive which had been employed prior to January 1, 1958.

(6) Notice of the decisions of the Food and Drug Administration on requests for extensions will be published in the FEDERAL REGISTER.

(e) Each request for an extension should be addressed to the Commissioner of Food and Drugs, and should give:

(1) The name and chemical composition of the food additive for which extension is requested.

(2) A statement of the uses of the food additive for which extension is requested and evidence that these uses were recognized prior to January 1, 1958.

(3) Information about the physical or technical effect produced by the additive, and the quantity needed to produce such effect.

(4) Information about the quantity of the additive expected in or to be added to the food.

(5) Available information which indicates that these amounts of the additive in food will not jeopardize the public health.

(6) A statement of the reason(s) why a tolerance has not previously been requested.

(7) In order that decisions on requests for extensions may be published before March 6, 1960, requests and supporting data should be received by February 1, 1960.

(Sec. 701(a), 52 Stat. 1055; 21 U.S.C. 352(a). Interprets or applies secs. 402, 409, 72 Stat. 1785, 1789; note under 21 U.S.C. 342; 21 U.S.C. 348)

Dated: December 23, 1959.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 59-11161; Filed, Dec. 30, 1959; 8:48 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.422]

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Miscellaneous Amendments to Nonimmigrant Visa Regulations

Part 41, Chapter I, Title 22 of the Code of Federal Regulations is hereby amended in the following respects:

§ 41.1 [Amendment]

1. The definition of the term "accredited" contained in § 41.1 *Definitions* is amended to read as follows:

Accredited. "Accredited", as used in sections 101(a)(15)(A), 101(a)(15)(G) and 212(d)(8) of the Act, refers to an alien who holds an official position, other than an honorary official position, with the government or international organization he represents, and who is in possession of a travel document or other evidence showing that he seeks to enter, or pass in transit through, the United States for the purpose of transacting official business for that government or international organization.

2. Section 41.7 is amended to read as follows:

§ 41.7 Waiver of visa and/or passport requirements by joint action of consular and immigration officers.

* * * * *

(d) *Visa waiver; certain aliens proceeding to the United States under emergent circumstances.* An alien who is well and favorably known at the consular office, who has previously been issued a nonimmigrant visa which has since expired, and who is embarking on a direct journey to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) *Visa and passport waiver; members of armed forces of foreign countries making friendly visits to the United States.* An alien who is on active duty as a member of the armed forces of a foreign country and who is a member of a group of such force which is making a friendly call at a United States port, whether courtesy or operational and whether in behalf of his own government or in behalf of the United Nations, under advance arrangements made with the military, naval, or air force authorities of the United States, other than an alien who is a citizen or resident of Albania, Bulgaria, Communist-controlled China ("Peoples Republic of China"), Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, North Korea ("Peoples Democratic Republic of Korea"), North Viet-Nam (Viet Minh), Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), or the Union of Soviet Socialist Republics.

(f) *Passport waiver; landed immigrants in Canada.* An alien applying for a visa at a consular office in Canada (1) who is a landed immigrant in Canada, (2) whose port and date of expected arrival in the United States are known, and (3) who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity.

3. Section 41.10 is amended to read as follows:

§ 41.10 Presumption of immigrant status and burden of proof.

An applicant for a nonimmigrant visa shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer that he is entitled to a nonimmigrant status described in section 101(a)(15) of the Act or otherwise established by law or treaty. The burden of proof is upon the applicant to establish that he is entitled to the nonimmigrant classification and type of nonimmigrant visa for which he is an applicant.

(Secs. 214, 291, 66 Stat. 189, 234; 8 U.S.C. 1184, 1361)

§ 41.12 [Amendment]

4. In the table in § 41.12 *Classification symbols* the "Class" entry reading "Treaty merchant, spouse and children" is amended to read "Treaty trader, spouse and children."

5. Section 41.14 is amended to read as follows:

§ 41.14 Significance of visa in A, G, or NATO cases.

A visa issued pursuant to the provisions of section 101(a)(15)(A) or 101(a)(15)(G) of the Act or to an alien classifiable under the symbols NATO-1 through NATO-7 shall be prima facie evidence of the proper classification of the alien when presented to the immigration authorities at a port of entry.

6. Section 41.25 is amended to read as follows:

§ 41.25 Temporary visitors for business or pleasure.

(a) An alien shall be classifiable as a nonimmigrant visitor for business or pleasure if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(B) of the Act and that: (1) He intends to depart from the United States at the expiration of his temporary stay; (2) He has permission to enter some foreign country upon the termination of his temporary stay; and (3) Adequate financial provisions have been made to enable him to carry out the purpose of his visit and to travel to, sojourn in, and depart from the United States.

(b) The term "business", as used in section 101(a)(15)(B) of the Act, refers to legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement shall be required to qualify under the provisions of § 41.55. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.

(c) The term "pleasure", as used in section 101(a)(15)(B) of the Act, refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives and rest; medical treatment; or educational activities which do not require classification as a student, trainee, temporary worker, or exchange visitor.

(Sec. 101, 66 Stat. 166; 8 U.S.C. 1101)

7. Section 41.41 is amended to read as follows:

§ 41.41 **Treaty investors.**

(a) * * *

(3) He is employed by a treaty investor in a responsible capacity and the employer is a foreign person or organization of the same nationality as the applicant.

8. Section 41.70 is amended to read as follows:

§ 41.70 **NATO representatives, officials and employees.**

(a) An alien shall be classifiable under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5 (see § 41.12 for classes of aliens entitled to classification under each symbol) if he establishes to the satisfaction of the consular officer that he is seeking admission to the United States under the applicable provision of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, or that he is a member of the immediate family of an alien classified under the symbol NATO-1, NATO-2, NATO-3, or NATO-4.

(b) An alien member of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and his dependents, shall be classifiable under the symbol NATO-6.

(c) An alien attendant, servant, or personal employee of an alien classified under the symbol NATO-1, NATO-2, NATO-3, or NATO-4, and the members of the immediate family of such attendant, servant, or personal employee, shall be classifiable under the symbol NATO-7.

(d) (1) Armed services personnel entering the United States in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters may enter the United States under the appropriate treaty waiver of documentary requirements contained in § 41.5 (d) or (e).

(2) Dependents of armed services personnel referred to in subparagraph (1) of this paragraph or members of a civilian component and their dependents entering the United States in accordance with the provisions of the Status-of-Forces Agreement shall be classifiable under the provisions of section 101(a) (15) (A) (ii) of the Act. Cross Reference: 1. For exemption from certain grounds for refusal of visas to NATO aliens, see § 41.91(e).

2. For exemption from passport validity requirement for certain NATO aliens, see § 41.91(f).

(5 U.S.T. 877, 1094)

9. Section 41.90 is amended to read as follows:

§ 41.90 **Basis for refusal.**

A visa shall be refused only upon a ground specifically set out in the law or regulations issued thereunder. The term "reason to believe", as used in section 221(g) of the Act, shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a nonimmigrant visa as provided in the Act and as implemented by the regulations contained in this part. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of a nonimmigrant visa may no longer exist. The burden of proof is upon the applicant to establish that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the Act, or any other provision of law and § 41.91.

(Sec. 221(g), 66 Stat. 192; 8 U.S.C. 1201(g))

10. Section 41.91(a) is amended to read as follows:

§ 41.91 **Aliens ineligible to receive visas.**

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.* * * *

(1-6) *Medical grounds of ineligibility.* A determination of ineligibility to receive a nonimmigrant visa under the provisions of section 212(a) (1) through (6) of the Act shall be based upon the finding of a competent medical examiner as referred to in § 41.113, except that in the case of an alien who applies for a nonimmigrant visa at a consular office where no medical officer of the United States Public Health Service has been assigned or detailed, and the consular officer knows or has reason to believe that such alien is a drug addict, a chronic alcoholic, or is afflicted with psychopathic personality by reason of sexual deviation, a finding of ineligibility to receive a nonimmigrant visa under the provisions of section 212(a) (4) or (5) of the Act may be based by the consular officer on facts or circumstances other than the finding of an examining physician.

* * * * *

(8) *Paupers, professional beggars, or vagrants.* The provisions of section 212 (a) (8) shall be applicable only in the case of an alien who is at the time of visa application a pauper, professional beggar, or vagrant.

(9) *Crime involving moral turpitude.* (i) A determination that a crime involves moral turpitude shall be based upon the moral standards generally prevailing in the United States. Before a finding of ineligibility under section 212(a) (9) of the Act may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred.

* * * * *

(vi) An alien shall not be considered ineligible to receive a visa under section 212(a) (9) of the Act by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10602. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a) (9) of the Act.

* * * * *

(10) *Conviction of two or more offenses.* * * *

(iii) An alien shall not be considered ineligible to receive a visa under section 212(a) (10) of the Act by reason of having been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more if a full and unconditional pardon or pardons for the offenses have been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a) (10) of the Act.

* * * * *

(12) *Prostitution, procuring and related activities.* (i) The term "prostitute" means a woman given to promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity which would indicate a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

* * * * *

(19) *Fraud and misrepresentation.* (i) An alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation by fraud or by willfully misrepresenting a material fact for the purpose of gaining admission into the United States, regardless of whether such fraud or misrepresentation occurred before or after December 24, 1952, shall be ineligible to receive a visa under the provisions of section 212(a) (19) of the Act: *Provided,* That the provisions of this subdivision shall not be applicable in the case of a bona fide refugee if such fraud or misrepresentation was committed in connection with the alien's entry into, or sojourn in, a foreign country and consisted of obtaining travel documents or of misrepresenting his place of birth, and the refugee was in fear of being repatriated to his former homeland if he had disclosed the facts in his case: *Provided further,* That such fraud or misrepresentation was not committed for the purpose of evading the quota restrictions of the United States immigration laws, or investigation of the alien's record at the place of his former residence or elsewhere in connection with an application for a visa.

* * * * *

(iii) The commission of fraud or the willful misrepresentation of a material fact in seeking to enter the United States shall not render an alien ineligible to receive a visa under the provisions of section 212(a)(19) of the Act. (6 I. & N. Dec. 149, approved by the Attorney General 9-13-54)

* * * * *

(22) *Aliens ineligible to citizenship or who departed to avoid service in the Armed Forces.* An alien shall be refused a nonimmigrant visa under the provisions of section 212(a)(22) of the Act if, having other than nonimmigrant status, he departed from or remained outside of the United States on or after September 8, 1939 to avoid or evade training or service in the United States Armed Forces.

* * * * *

(28) *Members or affiliates of proscribed organizations.* (i) The term "affiliate", as used in section 212(a)(28)(C) and (I) of the Act, shall mean an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other thing of value for any purpose to any proscribed association or party shall be presumed to be an "affiliate" of such association or party, but nothing contained in this subdivision shall be construed as an exclusive definition of the term "affiliate."

* * * * *

(iv) If an alien continues or continued his membership in or affiliation with a proscribed organization on or after his sixteenth birthday, only his activities after reaching sixteen years of age shall be pertinent to a determination whether the continuation of his membership or affiliation is or was voluntary.

* * * * *

(vi) In accordance with the definition of "totalitarian party" contained in section 101(a)(37) of the Act, a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, shall not be considered ineligible under the provisions of section 212(a)(28)(C) of the Act to receive a visa, unless the alien is known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship, as provided in section 212(a)(28)(D) of the Act.

(vii) The words "actively opposed", as used in section 212(a)(28)(I)(ii) of the Act, shall be considered as embracing speeches, writings, and other overt or covert activities in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a voluntary member or affiliate.

§ 41.91 [Amendment]

11. Section 41.91(c)(1)(ii) is amended to read as follows:

(c) *Failure of application to comply with Act.*

(1) * * *

(ii) The application contains a false or incorrect statement which does not constitute a ground of ineligibility under section 212(a)(19) of the Act;

12. Section 41.95(a) is amended to read as follows:

§ 41.95 Procedure in recommending temporary admission of ineligible aliens.

(a) Except as provided in paragraph (b) of this section, a consular officer may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212(d)(3)(A) of the Act in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of section 212(a) of the Act, other than paragraph (27) or (29).

13. Section 41.102(a)(6) is amended to read as follows:

§ 41.102 Classes of aliens eligible to receive diplomatic visas.

* * * * *

(a) * * *

(6) Justices of the highest national court of a foreign country;

14. Section 41.104(a) is amended to read as follows:

§ 41.104 Classes of aliens eligible to receive official visas.

* * * * *

(a) * * *

(3) Aliens classifiable under section 101(a)(15)(G) of the Act, except those classifiable under section 101(a)(15)(G)(iii) of the Act unless the government of which the alien is an accredited representative is recognized de jure by the United States;

* * * * *

(6) Justices of the lesser national and the highest State courts of a foreign country;

* * * * *

(12) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in subparagraphs (1) to (13) inclusive of § 41.102(a);

* * * * *

15. Section 41.110(a) is amended to read as follows:

§ 41.110 Place of application.

(a) *Applications for regular and official visas.* With the exception of certain aliens who are in the United States who may be issued nonimmigrant visas under the provisions of § 41.120, every alien applying for a regular or official visa shall make application to the consular officer in the consular district in which he has his residence, except that a consular officer shall at the direction of the Department, or may in his discretion, accept an application for a nonimmigrant visa from an alien having no residence in the consular district if the alien is physically present therein.

16. Section 41.111(c) is amended to read as follows:

§ 41.111 Supporting documents.

* * * * *

(c) *Photographs.* Except as otherwise provided in this paragraph, every alien shall furnish with his application identical photographs of himself in such number as may be required in the discretion of the consular officer. Th photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, and shall be 1½ by 1½ inches in size, unmounted, without head covering, have a light background, and clearly show a full front view of the facial features of the alien. Each copy of the photograph shall be signed by the person executing the application (see § 41.115(a)) with the full name of the alien in such manner as not to obscure the alien's features. The photograph requirement may be waived in the discretion of the consular officer in the case of any alien who is (1) within a class of nonimmigrants described in sections 101(a)(15)(A), 101(a)(15)(G) or 212(d)(8) of the Act, (2) within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3 or NATO-4, (3) an applicant for a diplomatic visa, (4) an applicant for an official visa, or (5) under sixteen years of age. A notation of any such waiver shall be made in the space provided in the application form for the alien's photograph.

17. Section 41.112(c) is amended to read as follows:

§ 41.112 Passports.

* * * * *

(c) *Applicants for diplomatic visas.* Every applicant for a diplomatic visa shall be required to present a diplomatic passport, or the equivalent thereof, having the period of validity indicated in paragraph (a) of this section, unless such requirement has been waived pursuant to the authority contained in section 212(d)(4) of the Act or unless the case falls within the provisions of § 41.91(f).

18. The cross reference appearing at the end of § 41.112 which reads "For provisions relating to passport of foreign government not recognized de jure by the United States see § 41.124(a)" is deleted.

19. Section 41.115 is amended to read as follows:

§ 41.115 **Application forms.**

(a) *Aliens required to execute applications.* Every alien applying for a nonimmigrant visa shall make application therefor on Form FS-257 (Application for Nonimmigrant Visa and Alien Registration) and where required Form FS-257AF (Statement in Support of Nonimmigrant Visa Application) unless personal appearance is waived under § 41.114. If personal appearance is waived, the application form shall be completed by the consular officer from available information. In the case of an alien under sixteen years of age, or one physically incapable of making an application, the application may be made by the alien's parent or guardian, or if the alien has no parent or guardian, by any person having legal custody of or a legitimate interest in the alien.

(b) *Additional information as part of application.* In any case in which the consular officer believes that the information provided in Form FS-257 or FS-257AF is inadequate to determine the alien's eligibility to receive a nonimmigrant visa he may require the submission of such additional information as may be necessary or interrogate the alien on any matter which is deemed material. Any additional statements made by the alien shall become a part of the visa application. All documents required under the authority of § 41.111(a) shall be considered papers submitted with the alien's application within the meaning of section 221(g)(1) of the Act.

20. Section 41.122 is amended to read as follows:

§ 41.122 **Validity of visas.**

* * * * *

(b) *Validity of visa pertains to period within which alien may apply for admission.* The period of validity of a nonimmigrant visa shall relate only to the period during which the alien to whom the visa was issued may use it in making application for admission into the United States.

* * * * *

(d) *Limitations on validity.* If warranted in an individual case, a consular officer may issue a nonimmigrant visa for (1) a period of validity which is less than that prescribed on a basis of reciprocity, (2) a number of applications for admission within the period of the validity of the visa which is less than that prescribed on a basis of reciprocity, (3) application for admission at a specified port or specified ports of entry in the United States, or (4) for use on and after a given date subsequent to the date of issuance.

(Sec. 221, 66 Stat. 191; 8 U.S.C. 1201)

21. Section 41.124 is amended to read as follows:

§ 41.124 **Procedure in issuing visas.**

(a) *Visa evidenced by stamp in passport.* Except as provided in paragraph (b) of this section the issuance of a nonimmigrant visa shall be evidenced by a stamp placed in the alien's passport and properly executed by the consular officer. The appropriate symbol, as prescribed in § 41.12, showing the classification of the nonimmigrant shall be inserted in the visa stamp.

(b) *Cases in which visa may not be stamped in passport.* In the following cases the visa stamp shall be placed on such form as shall be prescribed by the Department to which a photograph of the alien shall be attached under seal: (1) The alien's passport was issued by a government with which the United States has not entered into formal diplomatic relations, unless the Department has specifically authorized the insertion of the visa stamp in such passport; (2) The alien's passport does not provide sufficient space for the visa stamp; or (3) The passport requirement has been waived. In issuing a visa in such cases a notation shall be made on the form prescribed by the Department on which the visa is placed specifying the pertinent subparagraph of this paragraph under which the action is taken.

* * * * *

(i) *Delivery of visa and disposition of Form FS-257.* In issuing a nonimmigrant visa the consular officer shall deliver the visaed passport, or the form prescribed by the Department which bears the visa, to the alien or to his authorized representative in any case in which personal appearance has been waived. The executed Form FS-257 and any additional statements furnished by the alien in accordance with § 41.115(b) shall be retained in the consular files.

22. Section 41.125(a)(4) is amended to read as follows:

§ 41.125 **Revalidation of visas.**

(a) *Conditions for revalidation.* * * *

(4) the consular officer is satisfied that the alien is a bona fide nonimmigrant and is otherwise eligible to receive a nonimmigrant visa.

23. Section 41.127(b)(1) is amended to read as follows:

§ 41.127 **Crew-list visas.**

* * * * *

(b) *Application.* (1) A list of all alien crewmen who are serving on board a vessel or aircraft which is proceeding to the United States and who are not in possession of valid individual entry documents shall be submitted, in duplicate, to a consular officer on Immigration and Naturalization Service Form I-418 (Crew-list Manifest) or such other forms as may be prescribed. In lieu of a manifest on Form I-418, the manifest of alien crewmen serving on board an aircraft may be submitted on the International Civil Aviation Organization (ICAO) manifest, or on Customs Form 7507 (General Declaration) whenever the number of crewmen does not exceed the number which can be listed on the form. In cases of alien seamen serving on vessels, the duplicate copy of Form I-418 shall contain in column (4) the date, city and country of birth of each alien seaman listed who does not have in his possession a valid individual visa or an Immigration and Naturalization Service Form I-151 and, in column (5), the place of issuance and the authority issuing the passport held by such alien seaman. The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

24. Section 41.130(c) is amended to read as follows:

§ 41.130 **Procedure in refusing individual visas.**

* * * * *

(c) *Review of refusals by Department.* The Department may request a consular officer in an individual case or in specified classes of cases to submit a report if a nonimmigrant visa has been refused. The Department will review such reports and may furnish an advisory opinion to the consular officer for his assistance in giving further consideration to such cases. If upon the receipt of the Department's advisory opinion the consular officer contemplates taking action contrary to the advisory opinion, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, shall be binding upon consular officers.

25. Section 41.132 is amended to read as follows:

§ 41.132 **Exclusion from and refusal of crew-list visas.**

(a) *Exclusion from crew-list visa.* A consular officer who knows or has reason to believe that a crew list submitted for a visa contains the name of a person who is not a bona fide crewman, or who is otherwise ineligible to receive an individual visa as a crewman, shall exclude the name of any such crew member from the crew-list visa. In excluding a crewman's name from a crew-list visa, the consular officer shall place a notation below the visa stamp indicating the name of each crewman so excluded. A consular officer shall not strike a crewman's name from a crew list.

(b) *Refusal of crew-list visa.* A crew-list visa is refused if all aliens listed on the crew list are found by the consular officer not to be bona fide crewmen or otherwise ineligible to receive individual visas as crewmen. When a crew-list visa is refused in any case, a full report shall be forwarded by the consular officer to the Department in sufficient time to be received before the arrival of the vessel or aircraft at a port of entry. In such a case the original of the crew list shall be returned to the master, commanding officer or authorized agent and the duplicate shall be filed in the consular office.

(Sec. 221, 66 Stat. 191; 8 U.S.C. 1201)

26. Section 41.134(c)(3) is amended to read as follows:

§ 41.134 **Revocation and invalidation of visas.**

* * * * *

(c) *Procedure in revoking or invalidating visa.* * * *

(3) Notice of revocation or invalidation, including a full report of the facts in the case, shall be submitted promptly to the Department for transmission to the Immigration and Naturalization Service. No such notice and report shall

be required in the case of an invalidation if the visa has been cancelled prior to the alien's departure for the United States except in cases involving A, G, C-2, C-3, diplomatic or official visas.

27. Section 41.145 is amended to read as follows:

§ 41.145 Aliens entering areas under United States administration not included in section 101(a)(38) of the Act.

An alien seeking to enter an area as a nonimmigrant which is under United States administration but which is not within the "United States", as defined in section 101(a)(38) of the Act, is not required by the Act to be documented by a consular officer unless the authority contained in section 215 of the Act has been invoked.

Effective date. The regulations contained in this order shall become effective January 1, 1960 except the provisions of § 41.127(b) which shall become effective March 1, 1960.

The provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) relative to notice of proposed rule making are inapplicable to this order because the regulations contained therein involve foreign affairs functions of the United States.

JOHN W. HANES, Jr.,
Administrator, Bureau of Security and Consular Affairs.

DECEMBER 24, 1959.

[F.R. Doc. 59-11135; Filed, Dec. 30, 1959; 8:45 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6436]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Requirement of Additional Information in Application for Extension of Time To File an Individual Income Tax Return on Form 1040 or Form 1040W

On October 28, 1959, notice of proposed rule making regarding amendments of the Income Tax Regulations (26 CFR Part 1) to provide a new rule with respect to applications for extensions of time for filing individual income tax returns on Form 1040 or Form 1040W was published in the FEDERAL REGISTER (24 F.R. 8723). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 23, 1959.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

Section 1.6081-1, as amended by Treasury Decision 6371, approved April 1, 1959, is further amended by striking out paragraph (b) and inserting in lieu thereof the following:

(b) *Application for extension of time*—(1) *In general.* A taxpayer desiring an extension of the time for filing a return, statement, or other document shall submit an application therefor on or before the due date of such return, statement, or other document. Except as provided in subparagraph (3) of this paragraph, such application shall be made to the internal revenue officer with whom such return, statement, or other document is required to be filed. Such application shall be in writing, properly signed by the taxpayer or his duly authorized agent, and shall clearly set forth (i) the particular tax return, information return, statement, or other document, including the taxable year or period thereof, with respect to which the extension of the time for filing is desired, and (ii) a full recital of the reasons for requesting the extension to aid such internal revenue officer in determining the period of extension, if any, which will be granted.

(2) *Additional information in the case of Form 1040 or Form 1040W.* In addition to the information required under subparagraph (1) of this paragraph, the application of a taxpayer desiring an extension of the time for filing an individual income tax return on Form 1040 or Form 1040W for any taxable year beginning after December 31, 1958, shall also set forth (i) whether an income tax return has been filed on or before its due date for each of the three taxable years immediately preceding the taxable year of such return, and if not, the reason for each failure, and (ii) whether the taxpayer was required to file a declaration of estimated tax for the taxable year of such return, and if so, whether each required estimated tax payment was made on or before its due date. For purposes of this subparagraph a return is considered as filed on or before its due date if it is filed on or before the applicable date provided in section 6072 or on or before the last day of the period covered by an extension of time granted pursuant to the provisions of section 6081, and each required payment of estimated tax is considered as paid on or before its due date if it is paid on or before the applicable date provided in section 6153 or on or before the last day of the period covered by an extension of time granted pursuant to the provisions of section 6161.

(3) *Information returns filed with Service Center.* An application for an extension of the time for filing any information return required to be filed with an Internal Revenue Service Center shall state the location of the Service Center with which such return will be filed. Such application shall be made to the internal revenue officer with whom the applicant is required to file an income tax return or with whom the applicant would be required to file an income tax return if such a return were required of him.

(4) *Taxpayer unable to sign.* In any case in which a taxpayer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the taxpayer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth the reasons for a signature other than the taxpayer's and the relationship existing between the taxpayer and the signer.

(5) *Form of application.* The application for an extension of the time for filing a return, statement, or other document may be made in the form of a letter. However, in the case of an individual income tax return on Form 1040 or Form 1040W, the application for an extension of the time for filing may be made either on Form 2688 or in the form of a letter.

[F.R. Doc. 59-11155; Filed, Dec. 30, 1959; 8:47 a.m.]

SUBCHAPTER G—REGULATIONS UNDER TAX CONVENTIONS

[T.D. 6431]

PART 504—BELGIUM

Subpart—Belgian Congo and Ruanda-Urundi

Release of excess tax withheld, and exemption from, or reduction in rate of, withholding of tax at source in the case of residents of the Belgian Congo or Ruanda-Urundi and of Belgian Congo corporations, as affected by the extension to the Belgian Congo and to Ruanda-Urundi of the income tax convention of October 28, 1948, between the United States and Belgium, as amended.

AUTHORITY: §§ 504.301 to 504.310 issued under sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

§ 504.301 Introduction.

(a) *Pertinent provisions of the convention.* The income tax convention between the United States and Belgium of

October 28, 1948, as amended by the supplementary conventions of September 9, 1952, and August 22, 1957, was extended to the Territory of the Belgian Congo and to the Trust Territory of Ruanda-Urundi upon notification of April 2, 1954, given by the Belgian Government in accordance with Article XXII of the convention and accepted by the Government of the United States. The convention as so extended to such territories, referred to in this Treasury decision as the convention, provides in part as follows, effective with respect to taxable years beginning on or after January 1, 1959. For that purpose all references in the convention to Belgium or to one or the other contracting State shall, as the context requires, be construed to refer to the Belgian Congo or to Ruanda-Urundi, as the case may be:

ARTICLE I

(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States: The Federal income taxes.

(b) In the case of Belgium: The income taxes, the national crisis tax, and the personal complementary tax, including all additions to these taxes.

(2) The present Convention shall apply also to any other taxes of a substantially similar character imposed by either Contracting State subsequently to the date of signature of the present Convention or by the government of any territory to which the present Convention is extended under Article XXII.

(3) In the event of appreciable changes in the fiscal laws of either of the Contracting States the competent authorities of the Contracting States will consult together.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term "Belgium" when used in a geographical sense means the Kingdom of Belgium in Europe.

(c) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on in the United States by a citizen or resident of the United States or by a corporation or other juridical person created or organized in the United States or under the laws of the United States or of any State or Territory of the United States.

(d) The term "Belgian enterprise" means an industrial or commercial enterprise or undertaking carried on in Belgium by a citizen or resident of Belgium or by a corporation or other juridical person created or organized in Belgium or under the laws of Belgium. For the purposes of this convention, any corporation organized or created under the laws of Belgium or of the Belgian Congo and subject to tax under the Belgian fiscal law of June 21, 1927 shall be deemed to be a "Belgian enterprise."

(e) The terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a United States enterprise or a Belgian enterprise, as the context requires.

(f) The term "permanent establishment", when used with respect to an enterprise of one of the Contracting States, means a branch, factory, mine, oil well, plantation, workshop, warehouse, installation, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has control over a stock of merchandise from which he regularly fills orders on behalf of such enterprise. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business dealings in such other Contracting State through a bona fide commission agent or broker acting in the ordinary course of his business as such. When a corporation of one Contracting State has a subsidiary corporation which is a corporation created or organized in the other Contracting State or which is engaged in trade or business in such other Contracting State, such subsidiary corporation shall not, merely because of that fact, be deemed to be a permanent establishment of its parent corporation.

(g) The term "industrial and commercial profits" shall not include the following:

(i) Income from real property;

(ii) Income from mortgages, from public funds, securities (including mortgage bonds), loans, deposits, and current accounts;

(iii) Dividends and other income from shares in a corporation;

(iv) Rentals or royalties arising from leasing personal property or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, patents, copyrights, secret processes and formulae, good will, trademarks, trade brands, franchises, and other like property;

(v) Profit or loss from the sale or exchange of capital assets;

(vi) Compensation for labor or personal services.

Subject to the provisions of the present Convention, the income referred to in subparagraphs (i) to (vi) shall be taxed separately or together with industrial and commercial profits in accordance with the laws of the Contracting States.

(h) The term "competent authority" or "competent authorities" means, in the case of the United States, the Commissioner of Internal Revenue or his duly authorized representative; and in the case of Belgium, the Directeur General de l'Administration des Contributions Directes or his duly authorized representative; and, in the case of any territory to which the present Convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

(2) In the application of the provision of the present Convention by either of the Contracting States, any term which is not otherwise defined shall, unless the context otherwise requires, have the meaning which that term has under the laws of such Contracting State relating to the taxes which are the subject of the present Convention.

* * * * *

ARTICLE VI

Income of whatever nature derived from real property shall be taxable only in the Contracting State in which the real property is situated. This Article does not apply to income derived from mortgages or bonds secured by real property.

* * * * *

ARTICLE VIII

(1) The rate of United States tax on dividends derived from a United States corporation by a corporation created or organized in Belgium or under the laws of Belgium which is not engaged in trade or business in the United States through a permanent establishment therein shall not exceed five percent if the latter corporation controls, directly or indirectly, at least ninety-five percent of the entire voting power in the corporation paying the dividend, and not more than twenty-five percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Notwithstanding the provisions of Article XXIII of this Convention the provisions of this Article may be terminated by the United States provided prior notice is given to Belgium, such termination to become effective on the first day of the fourth calendar month following the calendar month in which such notice is given.

[In the application to the Belgian Congo and the Trust Territory of Ruanda-Urundi of the convention of October 28, 1948, as amended by the supplementary convention of September 9, 1952, the Belgian Congo and the Trust Territory of Ruanda-Urundi may impose taxe mobiliere at a rate not in excess of 15 percent on dividends from sources within the Belgian Congo and Ruanda-Urundi paid to a resident or corporation or other entity of the United States not having a permanent establishment in the Belgian Congo or Ruanda-Urundi. Art. II, supplementary convention of August 22, 1957]

ARTICLE VIIIA

The rate of tax imposed by each of the Contracting States upon interest (on bonds, notes, debentures, or on any other form of indebtedness) derived from sources within such State by a resident or corporation or other entity of the other State not having a permanent establishment within the former State shall not exceed 15 percent.

ARTICLE IX

(1) Rentals or royalties from real property or in respect of the operation of mines, quarries or other natural resources shall be taxable only in the Contracting State in which such property, mines, quarries or other natural resources are situated. A resident of Belgium, or a corporation or other juridical person created or organized in Belgium deriving such rentals or royalties from sources within the United States may elect for any taxable year to be subject to United States tax as if such resident, corporation or entity were engaged in trade or business within the United States through a permanent establishment therein in such taxable year.

(2) Royalties derived from within one of the Contracting States by a resident or by a corporation or other entity of the other Contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trade marks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there. The term "royalties" as used in this paragraph shall be deemed to include rentals in respect of motion picture films.

ARTICLE X

(1) Wages, salaries and similar compensations, and pensions and annuities, paid by one of the Contracting States or by the political subdivisions or territories thereof to citizens of that State residing in the other State (whether or not also citizens of such other State) shall be exempt from taxation in the latter State.

(2) Private pensions and annuities derived from within one of the Contracting States and paid to individuals residing in the other Contracting State shall be exempt from taxation in the former State.

(3) The term "pensions" as used in this Article means periodic payments made in

consideration for services rendered or by way of compensation for injuries received.

(4) The term "annuities" as used in this Article means a stated sum payable periodically at stated times, under an obligation to make the payments in consideration of money paid.

* * * * *

ARTICLE XV

(1) The competent authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions and regulations against legal avoidance in relation to the taxes which are the subject of the present Convention.

(2) Documents and information contained therein, transmitted under the provisions of the present Convention by one of the Contracting States to the other Contracting State shall not be published, revealed or disclosed to any person except to the extent permitted under the laws of the latter State with respect to similar documents or information.

* * * * *

ARTICLE XVII

(1) The Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which the present Convention relates, together with additions, interest, costs, and fines not being of a penal character.

(2) In the case of an application for enforcement of taxes, revenue claims of each of the Contracting States which have been finally determined may be accepted for enforcement by the other Contracting State and collected in that State in accordance with the laws applicable to the collection of its own taxes. The State to which application is made shall not be required to enforce executory measures for which there is no provision in the law of the State making the application.

(3) An application for collection shall be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes have been finally determined.

(4) The assistance provided for in this Article shall not be accorded with respect to the citizens, corporations, or other entities of the State to which application is made, except as is necessary to insure that the exemption or reduced rate of tax granted under the Convention to such citizens, corporations or other entities shall not be enjoyed by persons not entitled to such benefits.

ARTICLE XVIII

(1) In no case shall the provisions of Articles XV, XVI, and XVII be construed so as to impose upon either of the Contracting States the obligation

(a) To carry out administrative measures at variance with the regulations and practice of either Contracting State, or

(b) To supply information or particulars which are not procurable under its own legislation or that of the State making the application.

(2) The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it. Nevertheless, such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a business, industrial or trade secret. In such case it shall inform, as soon as possible, the State making the application.

* * * * *

ARTICLE XX

(1) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the Contracting States in the determination of the tax imposed by such State.

(2) Should any difficulty or doubt arise as to the interpretation or application of the present Convention, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Citizens or corporations or other juridical persons of one of the Contracting States within the other Contracting State shall not be subjected, as regards the taxes referred to in the present Convention, to the payment of higher taxes than are imposed upon the citizens or corporations or other juridical persons of such other Contracting State.

ARTICLE XXI

The competent authorities of the two Contracting States may (in the case of the United States, with the approval of the Secretary of the Treasury, and in the case of Belgium, with the approval of the Minister of Finance) prescribe regulations necessary to carry out the provisions of the present Convention. With respect to the provisions of the present Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection, and related matters.

ARTICLE XXII

(1) Either of the Contracting States may, at the time of exchange of instruments of ratification or thereafter while the present Convention continues in force, by a written notification of extension given to the other Contracting State through diplomatic channels, declare its desire that the operation of the present Convention, either in whole or as to such provisions thereof as may be deemed to have special application, shall extend to any of its colonies or overseas territories which imposes taxes substantially similar in character to those which are the subject of the present Convention.

(2) In the event that a notification is given by one of the Contracting States in accordance with paragraph (1) of this Article, the present Convention, or such provisions thereof as may be specified in the notification, shall apply to any territory named in such notification on and after the first day of January immediately preceding the date of a written communication through diplomatic channels addressed to such Contracting State by the other Contracting State, after such action by the latter State as may be necessary in accordance with its own procedures, stating that such notification is accepted in respect of such territory. In the absence of such acceptance, none of the provisions of the present Convention shall apply to such territory.

(3) At any time after the expiration of one year from the effective date of an extension made by virtue of paragraphs (1) and (2) of this Article, either of the Contracting States may, by a written notice of termination given to the other Contracting State through diplomatic channels, terminate the application of the present Convention to any territory to which the Convention, or any of its provisions, has been extended. In that case, the present Convention, or the provisions thereof specified in the notice of termination, shall cease to be applicable to any of the territories named in such notice of termination on and after the first day of January following the expiration of a period of six months after the date of such notice; provided, however, that this shall not affect the continued application of the Convention, or any of the provisions thereof, to the United States, to Belgium, or to any territory (not named in the notice of termination) to which the Convention, or such provision thereof, applies.

(4) For the application of the present Convention to any territory to which it is extended by the United States or by Belgium, references to "the United States" or to "Belgium" or to one or the other Contracting State, as the case may be, shall be construed to refer to such territory.

(5) For the purposes of the present Convention, the Belgian Congo shall be considered to be a Belgian territory to which the provisions of this Article shall apply.

[For the purposes of Article XXII of the convention of October 28, 1948, the expression "overseas territories" is construed as applying to any overseas territory for the foreign relations of which either contracting State is responsible. Art. IV, supplementary convention of August 22, 1957].

ARTICLE XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) The present Convention shall become effective on the first day of January of the year in which the exchange of instruments of ratification takes place. It shall continue effective for a period of five years beginning with that date and indefinitely after that period, but may be terminated by either of the Contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

(b) *Meaning of terms.* As used in this Treasury decision, any term defined in the convention shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

§ 504.302 Dividends entitled to reduced rate of tax.

(a) *Reduction in rate of United States tax*—(1) *Rate not to exceed 15 percent.* The rate of United States tax imposed upon dividends derived from sources within the United States in a taxable year beginning on or after January 1, 1959, by a nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi, or by a Belgian Congo corporation or other entity, shall not exceed 15 percent under the provisions of Article VIII of the convention if such alien, corporation, or other entity does not have a permanent establishment in the United States at any time during the taxable year in which the dividend is derived.

(2) *Personal services.* If a nonresident alien individual who is a resident of the Belgian Congo or Ruanda-Urundi were to perform personal services within the United States during the taxable year but not to have a permanent establishment in the United States at any time during the year, he would be entitled to the reduction in United States tax granted by Article VIII of the con-

vention even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he had engaged in trade or business within the United States during that year by reason of his having performed personal services therein.

(b) *Withholding of tax from dividends*—(1) *Rate of 15 percent.* Withholding of United States tax at source on or after January 1, 1959, in the case of dividends derived from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in the Belgian Congo or in Ruanda-Urundi, or by a foreign corporation or other entity whose address is in the Belgian Congo, shall, to the extent withholding of United States tax is required, be at the rate of 15 percent in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the withholding agent that the reduced rate of withholding shall not apply. This subparagraph is based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived. As to action by a recipient who is not the owner, see § 504.303.

(2) *Effect of address in the Belgian Congo or Ruanda-Urundi.* For the purpose of withholding of United States tax in the case of dividends, every nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in the Belgian Congo or Ruanda-Urundi shall be deemed by United States withholding agents to be a nonresident alien individual who is a resident of the Belgian Congo or Ruanda-Urundi, as the case may be, not having a permanent establishment in the United States; and every foreign corporation or other entity whose address is in the Belgian Congo shall be deemed by such withholding agents to be a Belgian Congo corporation or other entity not having a permanent establishment in the United States.

(3) *Evidence of tax withheld.* The rate at which United States tax has been withheld from any dividend paid at any time after the expiration of the thirtieth day after the date on which this Treasury decision is published in the FEDERAL REGISTER to any person whose address is in the Belgian Congo or Ruanda-Urundi at the time the dividend is paid shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment, or on an accompanying statement.

§ 504.303 Dividends received by addressee not actual owner.

(a) *Additional tax to be withheld*—(1) *Nominee or representative.* The recipient in the Belgian Congo or Ruanda-Urundi, as the case may be, of any dividend from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 504.302 (b)(1), who is a nominee or representative through whom the dividend is received by a person other than one described in § 504.302(a)(1) as being entitled to the reduced rate, shall withhold an additional amount of United States tax equivalent to the United States tax which would have been withheld if the convention had not been in effect (30 percent as of the date of approval of this Treasury decision) minus the 15 percent which has been withheld at source.

(2) *Fiduciary or partnership.* A fiduciary or a partnership with an address in the Belgian Congo or Ruanda-Urundi, as the case may be, which receives, otherwise than as a nominee or representative, a dividend from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 504.302(b)(1) shall withhold an additional amount of United States tax from the portion of the dividend included in the gross income from sources within the United States of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with § 504.302(a)(1). The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Released amounts of tax.* If any amount of United States tax is released pursuant to § 504.308(a)(1) by the withholding agent in the United States with respect to a dividend paid to such a person (nominee, representative, fiduciary, or partnership) with an address in the Belgian Congo or Ruanda-Urundi, as the case may be, the recipient shall withhold from such released amount any additional amount of United States tax, otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividend United States tax at the rate of only 15 percent had been withheld at source therefrom.

(b) *Returns filed by Belgian Congo or Ruanda-Urundi withholding agents.* The amounts withheld pursuant to paragraph (a) of this section by any withholding agent in the Belgian Congo or Ruanda-Urundi, as the case may be, shall be deposited, without converting the amounts into United States dollars, with the competent authority for the administration in that territory of the taxes which are the subject of the convention. The deposit shall be made on or before the 15th day after the close of the quarter of the calendar year in which the withholding in the territory occurs. The withholding agent making the deposit shall render therewith such appropriate form as may be prescribed by the competent authority for that territory. The amounts so deposited should be remitted by the competent authority by draft in United States dollars, on or before the end of the calendar month in which the deposit is made, to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C., U.S.A. The remittance should be accompanied by copies of such forms as may be required to be rendered by the withholding agent in that territory in connection with the deposit.

§ 504.304 Interest.

(a) *Reduction in rate of United States tax*—(1) *Rate of 15 percent.* The rate of United States tax imposed upon interest on bonds, securities, notes, debentures, or on any other form of indebtedness, including interest on obligations of the United States and its instrumentalities and on mortgages and bonds secured by real property, which is derived from sources within the United States in a taxable year beginning on or after January 1, 1959, by a nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi, or by a Belgian Congo corporation or other entity, shall not exceed 15 percent under the provisions of Article VIIIA of the convention if such alien, corporation, or other entity does not have a permanent establishment in the United States at any time during the taxable year in which the interest is derived.

(2) *Personal services.* If a nonresident alien individual who is a resident of the Belgian Congo or Ruanda-Urundi were to perform personal services within the United States during the taxable year but not to have a permanent establishment in the United States at any time during the year, he would be entitled to the reduction in United States tax granted by Article VIIIA of the convention even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he had engaged in trade or business within the United States during that year by reason of his having performed personal services therein.

§ 504.304 Interest.

(b) *Withholding of tax from interest*—(1) *Coupon bond interest*—(i) *Use of Form 1001–B.* To secure withholding of United States tax on or after January 1, 1959, at the rate of 15 percent in the case of coupon bond interest entitled to the reduced rate in accordance with paragraph (a) of this section, the nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, or the Belgian Congo corporation or other entity, shall, for each issue of bonds, file Form 1001–B in duplicate when presenting the interest coupons for payment. This form shall be signed by the owner of the interest, or by his trustee or agent, and shall show the information required by § 1.1461–1(d) of the Income Tax Regulations (26 CFR 1.1461–1 (d)). Form 1001–B shall contain a statement that the owner (*a*) is a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, or is a Belgian Congo corporation or other entity, and (*b*) has no permanent establishment in the United States.

(ii) *Reduction in rate applicable only to owner.* The reduction in the rate of United States tax granted by Article VIIIA of the convention is applicable only to the owner of the interest. The person presenting the interest coupon, or on whose behalf it is presented, shall, for the purpose of the reduction in withholding of United States tax, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment the owner of the bond from which the coupon has been detached. If the person presenting the coupon, or on whose behalf it is presented, is not the owner of the bond, Form 1001, and not Form 1001-B, shall be executed.

(iii) *Disposition of Form 1001-B.* The original and duplicate of Form 1001-B shall be forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C., in accordance with § 1.1461-(2)(b)(2) of the Income Tax Regulations (26 CFR 1.1461-2(b)(2)).

(2) *Interest on noncoupon bonds*—(i) *Use of letter of notification.* To secure withholding of United States tax on or after January 1, 1959, at the rate of 15 percent in the case of interest (other than coupon bond interest) entitled to the reduced rate in accordance with paragraph (a) of this section, the nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, or the Belgian Congo corporation or other entity, shall notify the withholding agent by letter in duplicate that the interest is subject to United States tax at the reduced rate in accordance with Article VIIIA of the convention. The letter of notification shall be signed by the owner of the interest, or by his trustee or agent, and shall show the name and address of the obligor and the name and address of the owner of the interest. The letter shall contain a statement that (*a*) the owner is neither a citizen nor a resident of the United States but is a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, or, in the case of a corporation or other entity, the owner is a Belgian Congo corporation or other entity, and (*b*) the owner has at no time during the current taxable year had a permanent establishment in the United States. The letter shall also indicate the dates on which the current taxable year of the taxpayer begins and ends.

(ii) *Use of letter for release of excess tax.* If the letter of notification is also to be used as authorization for the release, pursuant to § 504.308(a)(3), of excess tax withheld from the interest, it shall also contain a statement that (*a*) at the time when the interest was derived from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, or, in the case of a corporation or other entity, the owner was a Belgian Congo corporation or other entity, and (*b*) the owner at no time during the taxable year in which the interest was derived had a permanent establishment in the United States. The dates of the beginning and ending of the taxable year of the taxpayer in which the interest was derived shall also be indicated.

(iii) *Manner of filing letter of notification.* The letter of notification, which shall constitute authorization for withholding of United States tax on the interest at the reduced rate of 15 percent, shall be filed with the withholding agent for each successive 3-calendar-year period during which the interest is paid. For this purpose, the first of such periods shall commence with the beginning of the calendar year in which the interest is first paid on or after January 1, 1959. Each letter filed with any withholding agent shall be filed not later than 20 days preceding the date of the first payment within each successive period, or, if that is not possible because of special circumstances, as soon as possible after such first payment. Once a letter has been filed in respect of any 3-calendar-year period, no additional letter need be filed with respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an additional letter shall be filed by the taxpayer. If, after filing a leter of notification, the taxpayer ceases to be eligible for the reduced rate of United States tax granted by Article VIIIA of the convention, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the interest as recorded on the books of the payer, the reduction in the rate of withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(iv) *Disposition of letter.* Each letter of notification filed pursuant to this subparagraph, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

§ 504.305 Patent and copyright royalties and film rentals.

(a) *Exemption from United States tax.* (1) Royalties derived from sources within the United States in a taxable year beginning on or after January 1, 1959, by a nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi, or by a Belgian Congo corporation or other entity, as consideration for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights shall be exempt from United States tax under the provisions of Article IX (2) of the convention if such alien, corporation, or other entity does not have a permanent establishment in the United States at any time during the taxable year in which such royalties are derived.

(2) The term "royalties" as used in this section shall be deemed to include rentals in respect of motion picture films.

(b) *Exemption from withholding of tax*—(1) *Use of letter of notification.* To avoid withholding of United States tax on or after January 1, 1959, from a royalty which is exempt in accordance with paragraph (a) of this section, the nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, or the Belgian Congo corporation or other entity, shall notify the withholding agent by letter in duplicate that the royalty is exempt from United States tax under the provisions of Article IX (2) of the convention.

(2) *Manner of filing letter of notification.* The provisions of § 504.304(b)(2) relating to the execution, filing, effective period, and disposition of the letter of notification prescribed therein, including its use for the release of excess tax withheld, shall also apply to the letter of notification prescribed in subparagraph (1) of this paragraph.

§ 504.306 Private pensions and private annuities.

(a) *Exemption from United States tax*—(1) *In general.* Any private pension or private annuity derived from sources within the United States in a taxable year beginning on or after January 1, 1959, by a nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi shall be exempt from United States tax under the provisions of Article X(2) of the convention.

(2) *Definitions.* As used in this section, the term "pension" means a periodic payment made in consideration for services rendered or by way of compensation for injuries received, and the term "annuity" means a stated sum payable periodically at stated times under an obligation to make the payments in consideration of money paid. Neither term includes retired pay or pensions paid by the United States or by any State or territory of the United States.

(b) *Exemption from withholding of tax*—(1) *Use of letter of notification.* To avoid withholding of United States tax on or after January 1, 1959, from pensions or annuities which are exempt from tax in accordance with paragraph (a) of this section, the nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, shall notify the withholding agent by letter in duplicate that the pensions or annuities are exempt from United States tax under the provisions of Article X(2) of the convention. The letter of notification shall be signed by the owner of the income, shall show the name and address of both the payer and the owner of the income, and shall contain a statement that the owner, an individual, is neither a citizen nor a resident of the United States but is a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be. The letter shall also indicate the dates on which the current taxable year of the taxpayer begins and ends.

(2) *Use of letter for release of excess tax.* If the letter of notification is also to be used as authorization for the release, pursuant to § 504.308(a)(3), of excess tax withheld from the pensions or annuities, it shall also contain a statement that the owner was, at the time when the income was derived from which the excess tax was withheld, neither a citizen nor a resident of the United States but was a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be. The dates of the beginning and ending of the taxable year of the taxpayer in which the income was derived shall also be indicated.

(3) *Manner of filing letter of notification.* The letter of notification shall constitute authorization for the payment of the pensions or annuities without withholding of United States tax at source unless the Commissioner of Internal Revenue notifies the withholding agent thereafter to withhold the tax from such items of income. If, after

filing a letter of notification, the owner of the income ceases to be eligible under the convention for the exemption from United States tax in the case of such items of income, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the income as recorded on the books of the payer, the exemption from withholding of United States tax shall no longer apply unless the new owner of record is entitled to, and does properly, file a letter of notification with the withholding agent.

(4) *Disposition of letter.* Each letter of notification filed pursuant to this paragraph, or the duplicate thereof, shall be forwarded immediately by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

§ 504.307 Beneficiaries of a domestic estate or trust.

A nonresident alien individual who is a resident of the Belgian Congo or of Ruanda-Urundi and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption from, or reduction in the rate of, United States tax granted by Articles VIII, VIIIA, and IX of the convention with respect to dividends, interest, and patent and copyright royalties, to the extent that (1) any amount paid, credited, or required to be distributed by the estate or trust to the beneficiary is deemed to consist of those items and (2) the items so deemed to be included in such amount would, without regard to the convention, be includible in his gross income; *Provided, however,* That the beneficiary otherwise satisfies the requirements for exemption or reduction specified in the respective articles concerned. To obtain the exemption from, or reduction in rate of, withholding of United States tax in such a case, the beneficiary must, where applicable, execute and submit to the fiduciary of the estate or trust in the United States the appropriate letter of notification prescribed in § 504.304(b)(2) or § 504.305(b)(1).

§ 504.308 Release of excess tax withheld at source.

(a) *Amounts to be released*—(1) *Dividends.* If United States tax has been withheld at the statutory rate on or after January 1, 1959, from dividends derived from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address at the time of payment was in the Belgian Congo or in Ruanda-Urundi, as the case may be, or by a foreign corporation or other entity whose address at the time of payment was in the Belgian Congo, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 504.302(b)(1).

(2) *Coupon bond interest*—(i) *Substitute form.* In the case of every taxpayer who furnishes to the withholding agent Form 1001-B clearly marked "Substitute" and executed in accordance with § 504.304(b)(1)(i), where United States tax has been withheld at the statutory rate on or after January 1, 1959, from coupon bond interest, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld from such interest derived by the taxpayer in a taxable year beginning on or after January 1, 1959, and the tax required to be withheld pursuant to such section, if the taxpayer also attaches to the form a letter in duplicate, signed by the owner, or by his trustee or agent, and containing the following:

(*a*) The name and the address of the obligor;

(*b*) The name and the address of the owner of the interest from which the excess tax was withheld;

(*c*) A statement that, at the time when the interest was derived from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of the Belgian Congo or of Ruanda-Urundi, as the case may be, or, in the case of a corporation or other entity, the owner was a Belgian Congo corporation or other entity;

(*d*) A statement that the owner at not time during the taxable year in which the interest was derived had a permanent establishment in the United States; and

(*e*) The dates of the beginning and ending of the taxable year of the taxpayer in which the interest was derived.

One such substitute form shall be filed in duplicate with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by the taxpayer in the calendar year in which the excess tax was withheld and with respect to which the excess is released.

(ii) *Disposition of form.* The original and duplicate of substitute Form 1001-B (and letter) shall be forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C., in accordance with § 1.1461-2(b) of the Income Tax Regulations (26 CFR 1.1461-2(b)).

(3) *Interest on noncoupon bonds, royalties, pensions, and annuities.* If a taxpayer furnishes to the withholding agent the authorization for release prescribed in § 504.304(b)(2)(ii), § 504.305(b)(2), or § 504.306(b)(2) and United States tax has been withheld at the statutory rate on or after January 1, 1959, from the interest, royalties, pensions, or annuities in respect to which such authorization is prescribed, the withholding agent shall release and pay over to the person from whom the tax was withheld—

(i) In the case of interest derived by the taxpayer in a taxable year beginning on or after January 1, 1959, an amount which is equal to the difference between the tax so withheld from such interest and the tax required to be withheld pursuant to § 504.304(b)(2)(i), and

(ii) In the case of royalties, pensions, or annuities derived by the taxpayer in a taxable year beginning on or after January 1, 1959, an amount which is equal to the tax so withheld from such items.

(b) *Amounts not to be released.* The provisions of this section do not apply to excess tax withheld at source which has been paid by the withholding agent to the Director, International Operations Division.

(c) *Statutory rate.* As used in this section, the term "statutory rate" means the rate prescribed by chapter 3 (relating to the withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds) of the Internal Revenue Code of 1954 as though the convention had not come into effect.

§ 504.309 Information to be furnished in ordinary course.

For provisions relating to the exchange of information under Article XV of the convention, see § 1.1461-2(d) of the Income Tax Regulations (26 CFR 1.1461-2(d)).

§ 504.310 Application of the convention to fiscal years.

Since the convention is effective for taxable years beginning on or after January 1, 1959, the fact that the exemption from, or reduction in the rate of, withholding of United States tax at source authorized by this Treasury decision is made effective beginning January 1, 1959, is not a determination in itself that the item of income concerned is entitled to the benefit of the exemption from, or reduced rate of, United States tax granted by the convention.

Because it is necessary to bring into effect at the earliest practicable date the rules of this Treasury decision respecting release of excess tax withheld, and exemption from, or reduction in rate of, withholding of tax, it is hereby found that it is impracticable to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 29, 1959.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

[F.R. Doc. 59-11168; Filed, Dec. 30, 1959; 8:48 a.m.]

[T.D. 6437]

PART 507—UNITED KINGDOM

Subpart—United Kingdom Colonies

Release of excess tax withheld and exemption from, or reduction in rate of, withholding of tax at source in the case of residents of certain United Kingdom Colonies and of corporations of certain United Kingdom Colonies, severally, as affected by the extension to such Colonies of the income tax convention of April 16, 1945, between the United States and the United Kingdom.

AUTHORITY: §§ 507.501 to 507.511 issued under sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

§ 507.501 Introductory.

(a) *Pertinent provisions.* The income tax convention of April 16, 1945, between the United States and the United Kingdom of Great Britain and Northern Ireland, as supplemented by the protocol of June 6, 1946, and that of August 19, 1957, between such Governments, was, as proclaimed by the President of the United States on October 24, 1958, extended to the following Territories of the United Kingdom:

Aden.	Rhodesia and Nyasaland, Federation of.
Antigua.	St. Christopher, Nevis, and Anguilla.
Barbados.	St. Lucia.
British Honduras.	St. Vincent.
Cyprus.	Seychelles.
Dominica.	Sierra Leone.
Falkland Islands.	Trinidad and Tobago.
Gambia.	Virgin Islands.
Grenada.	
Jamaica.	
Montserrat.	
Nigeria, Federation of.	

The convention as so extended to such respective Territories, hereinafter referred to as the convention, provides in part as follows, effective on or after January 1, 1959. References in the convention to the United Kingdom or to one of the other Contracting States, as the case may be, shall be construed to refer to each of such United Kingdom Territories, severally, except in the case of Article VII. The exemption under Article VII has been extended only to the Federation of Rhodesia and Nyasaland.

ARTICLE I

(1) The taxes which are the subject of the present Convention are:

(a) In the United States of America: The Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as United States tax).

(b) In the United Kingdom of Great Britain and Northern Ireland: The income tax (including surtax), the excess profits tax and the national defense contribution (hereinafter referred to as United Kingdom tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of signature of the present Convention or by the government of any territory to which the present Convention is extended under Article XXII.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands, and the Isle of Man.

(c) The terms "territory of one of the Contracting Parties" and "territory of the other Contracting Party" mean the United States or the United Kingdom as the context requires.

(d) The term "United States corporation" means a corporation, association or other like entity created or organized in or under the laws of the United States.

(e) The term "United Kingdom corporation" means any kind of juridicial person created under the laws of the United Kingdom.

(f) The terms "corporation of one Contracting Party" and "corporation of the other Contracting Party" mean a United States corporation or a United Kingdom corporation as the context requires.

(g) The term "resident of the United Kingdom" means any person (other than a citizen of the United States or a United States corporation) who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom.

(h) The term "resident of the United States" means any individual who is resident in the United States for the purposes of United States tax and not resident in the United Kingdom for the purposes of United Kingdom tax, and any United States corporation and any partnership created or organized in or under the laws of the United States, being a corporation or partnership which is not resident in the United Kingdom for the purposes of United Kingdom tax.

(i) The term "United Kingdom enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom.

(j) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.

(k) The terms "enterprise of the Contracting Parties" and "enterprise of the other Contracting Party" mean a United States enterprise or a United Kingdom enterprise, as the context requires.

(l) The term "permanent establishment" when used with respect to an enterprise of one of the Contracting Parties means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the Contracting Parties shall not be deemed to have a permanent establishment in the territory of the other Contracting Party merely because it carries on business dealings in the territory of such other Contracting Party through a *bona fide* commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting Parties maintains in the territory of the other Contracting Party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one Contracting Party has a subsidiary corporation which is a corporation of the other Contracting Party or which is engaged in trade or business in the territory of such other Contracting Party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(2) For the purposes of Articles VI, VII, VIII, IX and XIV a resident of the United Kingdom shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, *mutatis mutandis*, by the United Kingdom in the case of a resident of the United States.

(3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party relating to the taxes which are the subject of the present Convention.

* * * * *

ARTICLE VI

(1) The rate of United States tax on dividends derived from a United States corporation by a resident of the United Kingdom who is subject to United Kingdom tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 percent: Provided that such rate of tax shall not exceed five percent if such resident is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Dividends derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends, and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

(3) Either of the Contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any year after the year 1945, and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the first day of January, and paragraph (2) hereof shall cease to be effective as to United Kingdom tax on and after the 6th day of April, in the year next following that in which such notice is given.

ARTICLE VII

(1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in the United Kingdom controlling, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation.

(2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the

United Kingdom by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax; but such exemption shall not apply to such interest paid by a corporation resident in the United Kingdom to a United States corporation controlling, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation.

ARTICLE VIII

(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade marks and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts shall be exempt from United States tax (a) if such resident is not engaged in trade or business in the United States through a permanent establishment situated therein or (b) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through that permanent establishment.

* * * * *

ARTICLE IX

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such poperty, derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15 percent: Provided that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals, and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

ARTICLE X

(1) Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a British subject who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from United Kingdom tax.

(2) Any salary, wage, similar remuneration, or pension, paid by the Government of the United Kingdom to an individual (other than a citizen of the United States who is not also a British subject) in respect of services rendered to the United Kingdom in the discharge of governmental functions, shall be exempt from United States tax.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

* * * * *

ARTICLE XII

(1) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United States by an individual who is a resident of the United Kingdom shall be exempt from United States tax.

(2) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United Kingdom by an individual who is a resident of the United States shall be exempt from United Kingdom tax.

(3) The term "life annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

* * * * *

ARTICLE XV

Dividends and interest paid on or after the first day of January 1945 by a United Kingdom corporation shall be exempt from United States tax except where the recipient is a citizen of or a resident of the United States or a United States corporation.

* * * * *

ARTICLE XX

(1) The taxation authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of the United States, the Commissioner of Internal Revenue or his authorized representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representative; and, in the case of any territory to which the present Convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

* * * * *

ARTICLE XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) Upon exchange of ratifications, the present Convention shall have effect—

(a) as respects United States tax, for the taxable years beginning on or after the first day of January 1945;

(b) (i) as respects United Kingdom income tax, for the year of assessment beginning on the 6th day of April 1945 and subsequent years; (ii) as respects United Kingdom surtax, for the year of assessment beginning on the 6th day of April 1944 and subsequent years; and (iii) as respects United Kingdom excess profits tax and national defense contribution, for any chargeable accounting period beginning on or after the first day of April 1945 and for the unexpired portion of any chargeable accounting period current at that date.

ARTICLE XXIV

(1) The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th day of June in any year after the year 1946, give to the other Contracting Party, through diplomatic channels, notice of termination and, in such event, the present Convention shall cease to be effective—

(a) as respects United States tax, for the taxable years beginning on or after the first day of January in the year next following that in which such notice is given;

(b) (i) as respects United Kingdom income tax, for any year of assessment beginning on or after the 6th day of April in the year next following that in which such notice is given; (ii) as respects United Kingdom surtax, for any year of assessment beginning on or after the 6th day of April in the year in which such notice is given; and (iii) as respects United Kingdom excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April in the year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present Convention or of any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties.

* * * * *

(b) *Meaning of terms*—(1) *In general.* As used in §§ 507.501 to 507.511, any term defined in the convention shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

(2) *Geographical scope.* Because of the number of geographical areas falling within the scope of this Treasury decision and the several items of income affected, this Treasury decision in terms applies to a Territory generically, without further specification. With respect to each specific item of income, rules are stated as applying to the Territory and such rules are to be given application to the other Territories, severally. The list of Territories set forth above is deemed to define in a geographical sense, each of such Territories.

§ 507.502 Dividends; general rule.

(a) *Paid by a Territory corporation.* Dividends paid on or after January 1, 1959, by a Territory corporation which is not a United States corporation, are exempt from United States tax under the provisions of Article XV of the convention if the recipient is a nonresident alien or a foreign corporation. Dividends so paid are not subject to the withholding of United States tax at source.

(b) *Derived from domestic corporation*—(1) *Rate of 15 percent.* The rate of United States tax upon dividends (other than dividends falling within the scope of paragraph (c)(1) of this section) derived from a domestic corporation on or after January 1, 1959, by a nonresident alien individual who is a resident of the Territory or by a foreign corporation (whether or not organized under the laws of the Territory) which is managed and controlled in the Territory shall not exceed 15 percent under the provisions of Article VI of the convention if such alien or corporation—

(i) Is subject to Territory tax on such dividends, and

(ii) At no time during the taxable year in which such dividends are derived has engaged in trade or business within the United States through a permanent establishment situated therein.

(2) *Personal services.* If a nonresident alien individual who is a resident of

the Territory performs personal services within the United States during the taxable year, but has at no time during such year a permanent establishment in the United States, he is (if subject to Territory tax on the dividend) entitled to the reduced rate of tax prescribed by subparagraph (1) of this paragraph, even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having performed personal services therein. The fact that the payee of the dividend is, owing to the application of reliefs, or exemptions under Territory revenue laws, not required to pay Territory tax on such dividend does not prevent the application of the reduction of the rate of Territory tax with respect to such dividend. If the dividend would have been subject to Territory tax had the payee thereof derived sufficiently large an income to require payment of tax, then liability to Territory tax exists for the purposes of the reduction in the rate of United States tax. As to what constitutes a permanent establishment, see Article II(1)(l) of the convention.

(c) *Dividends paid by a related corporation*—(1) *Rate of 5 percent.* Under the proviso of Article VI (1) of the convention, dividends paid by a domestic corporation on or after January 1, 1959, to a Territory corporation which controls, directly or indirectly, at the time the dividend is paid 95 percent or more of the entire voting power in such domestic corporation, are subject to tax at the rate of only 5 percent, if (i) not more than 25 percent of the gross income of the domestic corporation paying the dividend for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporation, if any), (ii) the relationship between such domestic corporation and such foreign corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 percent, and (iii) the Territory corporation at no time during the taxable year in which such dividends are derived has engaged in trade or business within the United States through a permanent establishment situated therein.

(2) *Information to be filed with the Commissioner.* Any domestic corporation which claims or contemplates claiming that dividends paid or to be paid by it on or after January 1, 1959, are subject only to a rate of United States tax not in excess of 5 percent shall, as soon as practicable, file with the Commissioner of Internal Revenue the following information:

(i) The date and place of its organization;

(ii) The number of outstanding shares of stock of the domestic corporation having voting power and the voting power thereof;

(iii) The person or persons beneficially owning such stock of the domestic corporation and their relationship to the Territory corporation;

(iv) The amounts by years (for the three-year period immediately preceding the taxable year in which the dividend is paid) of the gross income of the domestic corporation from its own subsidiary corporation, if any; and

(v) The relationship between the domestic corporation and the Territory corporation deriving the dividend.

(3) *Notification by Commissioner.* As soon as practicable after such information is filed, the Commissioner of Internal Revenue will determine whether the dividends concerned fall within the scope of the proviso of Article VI (1) of the convention and will notify the domestic corporation of his determination. If the dividends fall within the scope of the proviso, this notification may also authorize the release, pursuant to § 507.510, of excess tax withheld from the dividends concerned.

(d) *Effect on withholding of address in Territory.* For the purposes of withholding of the tax in the case of dividends, every nonresident alien (including a nonresident alien individual, fiduciary, or partnership) whose address is in the Territory shall be deemed by United States withholding agents to be a resident of the Territory, subject to Territory tax and not engaged in trade or business within the United States through a permanent establishment situated therein, and every corporation whose address is in the Territory shall be deemed by such withholding agents to be a foreign corporation managed and controlled in the Territory, subject to Territory tax, and not engaged in trade or business within the United States through a permanent establishment situated therein.

(e) *Withholding of United States tax from dividends*—(1) *Rate of 15 percent.* Withholding at the source, as required under the internal revenue laws, in the case of dividends (other than dividends falling within the scope of subparagraph (2) of this paragraph) derived from a domestic corporation by nonresident aliens (including a nonresident alien individual, fiduciary, and partnership) and by foreign corporations, whose addresses of record on the books of such domestic corporation are in the Territory, shall be at the rate of 15 percent in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the withholding agent that the reduced rate of withholding shall not apply. This provision is based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived. As to action by a recipient who is not the owner of the dividend, see § 507.503.

(2) *Rate of 5 percent.* If, in accordance with paragraph (c)(3) of this section, the Commissioner of Internal Revenue has notified the domestic corporation that the dividends fall within the scope of the proviso of Article VI (1) of the convention, the reduced withholding rate of 5 percent, to the extent withholding of United States tax is required, shall apply to any dividends subsequently paid by such corporation and derived by the Territory corporation, unless the stock ownership of the domestic corporation, or the character of its income, materially changes; or unless the Commissioner determines that the relationship between the two corporations concerned is being maintained primarily with the intention of securing the reduced rate of tax. If such change in stock ownership or character of income occurs, the domestic corporation shall promptly notify the Commissioner of the then existing facts with respect thereto. The continued application of the rate not in excess of 5 percent is also dependent upon the continued fulfillment of paragraph (c)(1)(iii) of this section.

(3) *Evidence of tax withheld.* The rate at which United States tax has been withheld from any dividend paid at any time after the expiration of the thirtieth day after the date on which this Treasury decision is published in the FEDERAL REGISTER to any person whose address is in the Territory at the time the dividend is paid shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment, or on an accompanying statement.

§ 507.503 Dividends received by addressee not actual owner.

(a) *Additional tax to be withheld*—(1) *Nominee or representative.* The recipient in the Territory of any dividend from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 507.502(e)(1), who is a nominee or representative through whom the dividend is received by a person other than one described in § 507.502(b) as being entitled to the reduced rate, shall withhold an additional amount of United States tax equivalent to the United States tax which would have been withheld if the convention had not been in effect (30 percent as of the date of approval of §§ 507.501 to 507.511 minus the 15 percent which has been withheld at the source.

(2) *Fiduciary or partnership.* If a fiduciary or a partnership with an address in the Territory receives, otherwise than as a nominee or representative, a dividend from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 507.502(e)(1), such fiduciary or partnership shall withhold an additional amount of United States tax from the portion of the dividend included in the gross income from sources within the United States of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with § 507.502(b). The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Released amounts of tax.* If any amount of United States tax is released pursuant to § 507.510 by the withholding agent in the United States with respect to a dividend paid to such a person (nominee, representative, fiduciary, or partnership) with an address in the Territory, the latter shall withhold from such released amount any additional

amount of United States tax, otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividend United States tax at the rate of only 15 percent had been withheld at source therefrom.

(b) *Returns filed by Territory withholding agents.* The amounts withheld pursuant to paragraph (a) of this section by any withholding agent in the Territory shall be deposited, without converting the amounts into United States dollars, with the chief tax collecting official of the Territory on or before the 15th day after the close of the quarter of the calendar year in which the withholding in the Territory occurs. The withholding agent making the deposit shall render therewith such appropriate Territory form as may be prescribed by the Commissioner of Taxes. The amounts so deposited should be remitted by the chief tax collecting official by draft in United States dollars to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C., U.S.A., on or before the end of the calendar month in which the deposit is made, and the remittance should be accompanied by such Territory form as may be required to be rendered by the withholding agent in the Territory in connection with the deposit.

(c) *Application to Territories generally.* The provisions of §§ 507.502 and 507.503 (relating to dividends), made specifically applicable to the Territory for the reasons set forth in § 507.501 (b)(2), are hereby made equally applicable to each, severally, of the Territories enumerated in § 507.501(a). For that purpose, any reference to the Territory made in § 507.502 or § 507.503 shall be deemed to be a reference to each of such Territories, severally. Thus, where the address of a stockholder of record of a domestic corporation is, for example, in Jamaica, withholding of the tax from any dividend paid by such corporation, or the paying agent, to such stockholder shall be governed by the provisions of §§ 507.502 and 507.503, §§ 507.501 to 507.511 as though the term "Jamaica" had been employed in such sections instead of the term "the Territory."

§ 507.504 Interest paid by Territory corporation.

Interest paid on or after January 1, 1959, by a Territory corporation is exempt from United States tax under the provisions of Article XV of the convention, as extended to the Territory, if the recipient is not a citizen, resident, or corporation of the United States. Interest so paid is not subject to the withholding of United States tax at the source.

§ 507.505 Interest derived from United States sources paid to resident of the Federation of Rhodesia and Nyasaland.

(a) *Interest paid to resident of the Federation of Rhodesia and Nyasaland.* Interest (other than interest falling within the scope of paragraph (b) of this section) on bonds, securities, notes, debentures, or any other form of indebtedness, including interest on obligations of the United States or instrumentalities of the United States, received in any taxable year beginning on or after January 1, 1959, from sources within the United States by (1) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the Federation of Rhodesia and Nyasaland or (2) a foreign corporation (whether or not organized under the laws of the Federation), which is managed and controlled in the Federation, is exempt from United States tax under the provisions of Article VII of the convention if such alien or corporation—

(i) Is subject to Federation tax on such interest, and

(ii) At no time during the taxable year in which such interest was so derived was engaged in trade or business within the United States through a permanent establishment situated therein.

Such interest is, therefore, not subject to the withholding provisions of the Internal Revenue Code. This paragraph does not apply to the interest which is exempt from United States tax in accordance with § 507.504.

(b) *Exemption not applicable to interest paid by related corporation to the parent corporation.* Article VII(1) of the convention provides in part that the exemption from United States tax of interest paid to residents of the Federation shall not apply to interest paid by a domestic corporation to a foreign corporation managed and controlled in the Federation if such foreign corporation controls, directly or indirectly, more than 50 percent of the voting power of all classes of stock of such domestic corporation. The exemption provisions of Article VII(1) of the convention have, therefore, no application to such interest. In any case in which (1) a foreign corporation managed and controlled in the Federation derives interest from a domestic corporation and (2) the relationship existing between the foreign corporation and the domestic corporation is such as to render uncertain whether the exemption applies to such interest, a statement of the facts should be filed with the Commissioner of Internal Revenue, Washington 25, D.C. As soon as practicable after such statement is filed the Commissioner of Internal Revenue will determine whether the interest involved is entitled to exemption under the provisions of Article VII(1) of the convention, and will notify such foreign corporation whether the exemption provided in Article VII(1) of the convention applies to such case. If, in such case, the Commissioner of Internal Revenue determines that such exemption applies, a copy of the letter from the Commissioner of Internal Revenue shall be filed forthwith with the domestic corporation.

(c) *Exemption from withholding of United States tax*—(1) *Coupon bond interest*—(i) *Form to use.* To avoid withholding of United States tax at the source on or after the effective date, in the case of coupon bond interest, the nonresident alien who is a resident of the Federation or the foreign corporation managed and controlled in the Federation or other entity shall for each issue of bonds file Form 1001–UK in duplicate when presenting the interest coupons for payment. This form shall be signed by the owner of the interest, trustee, or agent, and shall show the information required by § 1.1461–1(d) of the Income Tax Regulations (26 CFR 1.1461–1(d)). The form shall contain a statement that the owner is a resident of the Federation or is a foreign corporation managed and controlled in the Federation, that the owner has no permanent establishment in the United States, and that the owner is chargeable to the Federation tax with respect to the income.

(ii) *Exemption applicable only to owner.* The exemption from United States tax contemplated by Article VII of the convention, insofar as it concerns coupon bond interest, is an exemption applicable only to the owner of such interest. The person presenting such coupon or on whose behalf it is presented shall, for the purpose of the exemption from United States tax, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon is not the owner of the bond, Form 1001, and not Form 1001–UK shall be executed.

(iii) *Disposition of form.* The original and duplicate of Form 1001–UK shall be forwarded to the Director, International Operations, Internal Revenue Service, Washington 25, D.C., in accordance with § 1.1461–2(b)(2) of the Income Tax Regulations (26 CFR 1.1461–2(b)(2)).

(2) *Interest on noncoupon bonds*—(i) *Notification by letter.* To avoid withholding of United States tax at source in the case of interest (other than interest payable by means of coupon) to which paragraph (a) of this section applies, the nonresident alien who is a resident of the Federation, or a foreign corporation managed and controlled in the Federation, shall notify the withholding agent by letter, in duplicate, that the interest is exempt from United States tax under the provisions of Article VII of the convention. The letter of notification shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor and the name and address of the owners of the interest. It shall contain a statement (a) that the owner is neither a citizen nor a resident of the United States but is a resident of the Federation or, in the case of a corporation, that the owner is a foreign corporation managed and controlled in the Federation; (b) that the owner has at no time during the taxable year engaged in trade or business within the United States through a permanent establishment situated therein; and (c) that, in the case of interest paid by a domestic corporation to a foreign corporation, managed and controlled in the Federation, the owner does not control, directly or indirectly, more than 50 percent of the entire voting power of all classes of stock of the United States domestic corporation (for cases where the degree of stock ownership is uncertain, see paragraph (c) of this section); and (d) that the taxpayer is chargeable to

the Federation tax with respect to such interest. The degree of liability to Federation tax sufficient to entitle the owner of the interest (including coupon bond interest) to exemption from withholding is the same as that with respect to dividends. (See § 507.502(b)(2).

(ii) *Use of letter for release of tax.* If the letter is also to be used as authorization for the release, pursuant to § 507.510 (a)(5), of the excess tax withheld from interest, it shall also contain a statement (*a*) that, at the time when the interest was derived from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of the Federation, or in the case of a corporation, the owner was a foreign corporation managed and controlled in the Federation; (*b*) that the owner at no time during the taxable year in which the interest was derived was engaged in trade or business within the United States through a permanent establishment situated therein; and, (*c*) in the case of interest paid by a domestic corporation to a foreign corporation managed and controlled in the Federation, that the owner did not control, directly or indirectly, at the time when the interest was paid, more than 50 percent of the entire voting power of all classes of stock of the United States domestic corporation.

(iii) *Manner of filing letter.* The letter of notification, which shall constitute authorization for the payment of interest without withholding of United States tax at source, shall be filed with the withholding agent for each successive three-calendar-year period during which the interest is paid. For this purpose, the first period shall commence with the beginning of the calendar year in which the interest is first paid on or after January 1, 1959. Each letter filed with any withholding agent shall be filed not later than 20 days preceding the date of the first payment within each successive period or, if that is not possible because of special circumstances, as soon as possible after such first payment. Once a letter has been filed in respect of any three-calendar-year period, no additional letter need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an additional letter shall be filed by the taxpayer. If, after filing a letter of notification, the taxpayer ceases to be eligible for the exemption of United States tax granted by Article VII(1) of the convention, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the interest as recorded on the books of the payor, the exemption from withholding of United States tax shall no longer apply unless the new owner of record is entitled to, and does properly, file a letter of notification with the withholding agent.

(iv) *Disposition of letter.* Each letter of notification, or a duplicate thereof, shall be immediately forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

(d) *Territories other than the Federation of Rhodesia and Nyasaland.* The provisions of Article VII of the convention (relating to interest) have no application to any Territory other than the Federation of Rhodesia and Nyasaland. Hence, interest from sources within the United States paid to a nonresident alien, who is a resident of any of the Territories (other than the Federation) enumerated in § 507.501(a), or a foreign corporation, a resident of any of such Territories, remains subject to United States tax imposed by the Internal Revenue Code of 1954 without reference to the convention. See Annex, III Modifications, Senate Executive C, 85th Congress, 2d Session (9 UST 1462).

§ 507.506 Patent and copyright royalties and film rentals.

(a) *Exemption from tax.* Royalties and other like amounts received in any taxable year beginning on or after January 1, 1959, from sources within the United States by (1) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the Territory, or (2) a foreign corporation (whether or not organized under the laws of the Territory) which is managed and controlled in the Territory, as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trademarks, and other like property are exempt from United States tax under the provisions of Article VIII of the convention if such alien or corporation (i) is subject to Territory tax on such royalties or other amounts, and (ii) at no time during the taxable year in which such royalties or other amounts were so received had a permanent establishment within the United States or if such alien or corporation had a permanent establishment within the United States, the royalties or other like amounts are not directly associated with the business carried on through the permanent establishment. Such items are not, therefore, subject to the withholding provisions of the Internal Revenue Code. For the purposes of Article VIII of the convention and of this section the terms "royalties" and "royalties and other like amounts" include rentals for the use of, or for the right to use, motion picture films. As to what constitutes a permanent establishment, see Article II(1)(*l*) of the convention.

(b) *Exemption from withholding of United States tax*—(1) *Notification by letter.* To avoid withholding at the source, in the case of income to which this section applies, the nonresident alien who is a resident of the Territory or the foreign corporation managed and controlled in the Territory shall notify the withholding agent by letter, in duplicate, that the income is exempt from the United States tax under the provisions of Article VIII of the convention.

(2) *Manner of filing letter.* The provisions of § 507.505(c)(2) (other than those pertaining to the degree of control of voting power), relating to the execution, filing, effective period, and disposition of the letter of notification prescribed therein, including its use for the release of excess tax withheld, are equally applicable with respect to the income falling within the scope of this section.

(c) *Application to Territories generally.* The provisions of this section (relating to royalties and film rentals) made specifically applicable to the Territory for the reasons set forth in § 507.501(b)(2) are hereby made equally applicable to each, severally, of the Territories enumerated in § 507.501(a). For that purpose any reference to the Territory made in this section shall be deemed to be a reference to each of such Territories, severally. Thus, for example, where a nonresident alien, a resident of Trinidad, is the licensor of a patent licensed for use in the United States, the provisions of this section shall be applicable as though the term "Trinidad" had been employed in such section instead of the term "the Territory."

§ 507.507 Real property rentals and natural resource royalties.

(a) *Reduction in rate of tax.* The rate of tax imposed by section 871(a) of the Internal Revenue Code of 1954 (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 881(a) of the Code (relating to foreign corporations not engaged in trade or business within the United States) is 30 percent. Such rate in the case of real property rentals and royalties in respect of the operation of natural resources received on or after January 1, 1959 from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the Territory or a foreign corporation (whether or not organized under the laws of the Territory) managed and controlled in the Territory is reduced to 15 percent under the provisions of Article IX of the convention if such alien or corporation is subject to Territory tax on such royalties or other amounts and at no time during the taxable year in which such rental or royalty or other amount was so received had a permanent establishment situated within the United States. As to what constitutes a permanent establishment, see Article II(1)(*l*) of the convention.

(b) *Reduction in rate of withholding*—(1) *Notification by letter.* In order to secure the benefit of the reduced rate of tax provided in Article IX of the convention at the time the real property rental or natural resource royalty is paid, the nonresident alien who is a resident of the Territory or the foreign corporation managed and controlled in the Territory shall notify the withholding agent by letter, in duplicate, that the income is subject only to the reduced rate of United States tax of 15 percent under the provisions of Article IX of the convention. Such letter shall be signed by the owner of the income, trustee, or agent, and shall show the name and address of the payor of the rental or natural resource royalty or other like amount; the name and address of the owner of such income; that the owner is a resident of the Territory or is a foreign corporation managed and controlled in the Territory; and that the owner has no permanent establishment in the United States and is chargeable to Territory tax with respect to such income. The degree of liability to Territory tax sufficient to entitle the payee of the income to the reduced rate of tax is the same as that with respect to dividends. See § 507.502(b)(2).

(2) *Manner of filing letter.* The provisions of § 507.505(c)(2), relating to the execution, filing, effective period, disposition of the letter of notification prescribed therein, and its use for the release of excess tax withheld, are equally applicable with respect to the income falling within the scope of this section.

(c) *Application to Territories other than the Territory.* The provisions of this section made specifically applicable to the Territory for the reason set forth in § 507.501(b)(2) are hereby made equally applicable to each, severally, of the Territories enumerated in § 507.501(a). For that reason, any reference to the Territory made in this section shall be deemed to be a reference to each of such Territories, severally. Thus, where the recipient of real property rentals from sources in the United States is, for example, in Jamaica, withholding of the tax from such rentals shall be governed by the provisions of this section as though the term "Jamaica" had been employed in such section instead of the term "the Territory."

§ 507.508 Pensions and life annuities.

(a) *Exemption from tax.* Article XII of the convention provides in part that pensions (other than pensions paid by the United States) and life annuities derived on or after January 1, 1959, from sources within the United States by a nonresident alien individual who is a resident of the Territory shall be exempt from United States tax.

(b) *Exemption from withholding of United States tax*—(1) *Notification by letter.* To avoid withholding of United States tax at source in the case of the items of income to which this section applies, the nonresident alien individual who is a resident of the Territory shall notify the withholding agent by letter in duplicate that the income is exempt from United States tax under the provisions of Article XII of the convention. The letter of notification shall be signed by the owner of the income, shall show the name and address of both the payor and the owner of the income, and shall contain a statement that the owner, an individual, is neither a citizen nor a resident of the United States but is a resident of the Territory.

(2) *Use of letter for release of tax.* If the letter is also to be used as authorization for the release, pursuant to § 507.510(a)(5), of excess tax withheld from such items of income, it shall also contain a statement that the owner was, at the time when the income was derived from which the excess tax was withheld, neither a citizen nor a resident of the United States, but was a resident of the Territory.

(3) *Manner of filing letter.* The letter of notification shall constitute authorization for the payment of such items of income without withholding of United States tax at source unless the Commissioner of Internal Revenue subsequently notifies the withholding agent that the tax shall be withheld with respect to payments of such items of income made after receipt of such notice. If, after filing a letter of notification, the owner of the income ceases to be eligible for the exemption from United States tax granted by the convention in respect to such income, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of income as recorded on the books of the payor, the exemption from withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(4) *Disposition of letter.* Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

(c) *Application to Territories generally.* The provisions of this section (relating to pensions and life annuities), made specifically applicable to the Territory for the reasons set forth in § 507.501(b)(2) are hereby made equally applicable to each, severally, of the Territories enumerated in § 507.501(a). For that reason, any reference to the Territory made in this section shall be deemed to be a reference to each of such Territories, severally. Thus, where the recipient of a pension or life annuity from sources in the United States is, for example, in British Honduras, withholding of the tax from such rentals shall be governed by the provisions of this section as though the term "British Honduras" had been employed in such section instead of the term "the Territory."

§ 507.509 Beneficiaries of a domestic estate or trust.

(a) *Entitled to benefits of convention.* If he otherwise satisfies the requirements of the respective articles concerned, a nonresident alien who is a beneficiary of an estate or trust, and who is a resident of the Territory, shall be entitled to the exemption from, or reduction in the rate of, United States tax granted by Articles VI, VIII, IX, and XV of the convention with respect to dividends, interest, royalties, natural resource royalties, and rentals from real property to the extent that (1) any amount paid, credited, or required to be distributed by such estate or trust to such beneficiary is deemed to consist of such items, and (2) such items would, without regard to the convention, be includible in his gross income. With respect to a nonresident alien who is a resident of the Federation of Rhodesia and Nyasaland, this paragraph shall also apply to the exemption from tax provided by Article VII(1).

(b) *Withholding of United States tax.* In order to be entitled in such instance to the exemption from, or reduction in rate of, withholding of United States tax, the beneficiary must otherwise satisfy such requirements and shall, where applicable, execute and submit to the fiduciary of the estate or trust in the United States the appropriate letter of notification prescribed in §§ 507.505, 507.506, and 507.507.

(c) *Amounts otherwise includible in gross income of beneficiary.* For the determination of amounts which, without regard to the convention, are includible in the gross income of the beneficiary, see subchapter J of chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder (26 CFR 1.641-1 through 1.692-1).

(d) *Application to Territories generally.* The provisions of this section made specifically applicable to the Territories for the reason set forth in § 507.501(b)(2) are hereby made equally applicable to each, severally, of the Territories enumerated in § 507.501(a). For that reason, any reference to the Territory made in this section shall be deemed to be a reference to each of such Territories, severally. Thus, where a beneficiary of a domestic estate or trust is, for example, in Trinidad, withholding of the tax from the income of such estate or trust shall be governed by the provisions of this section as though the term "Trinidad" had been employed instead of the term "the Territory."

§ 507.510 Release of excess tax withheld at source.

(a) *Amounts to be released*—(1) *Dividends and interest paid by a Territory corporation.* If United States tax at the statutory rate has been withheld on or after the effective date of the extension of the convention from dividends and interest paid by a Territory corporation (other than a United States corporation) to a recipient who is a nonresident alien or a foreign corporation, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the tax so withheld.

(2) *Dividends subject to 15-percent rate.* If United States tax at the statutory rate has been withheld on or after the effective date of the extension of the convention from dividends described in § 507.502(e)(1), and received from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) or by a foreign corporation, whose address at the time of payment was in the Territory, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 507.502(e)(1).

(3) *Dividends subject to 5-percent rate.* If United States tax at the statutory rate has been withheld on or after the effective date of the extension of the convention from dividends which qualify under § 507.502(e)(2) for a rate of tax not in excess of 5 percent, the withholding agent shall release and pay over to the corporation from which the tax was withheld an amount which is equal to the difference between the tax

so withheld and the tax required to be withheld pursuant to § 507.502(e)(2).

(4) *Coupon bond interest*—(i) *Substitute form.* In the case of every taxpayer who furnishes to the withholding agent Form 1001–UK clearly marked "Substitute" and executed in accordance with § 507.505(c)(1), where United States tax has been withheld at the statutory rate on or after the effective date of the extension of the convention, from coupon bond interest exempt under § 507.505, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the tax so withheld, if the taxpayer also attaches to such form a letter in duplicate, signed by the owner, or by his trustee or agent and containing the following:

(*a*) The name and address of the obligor;

(*b*) The name and address of the owner of the interest from which the excess tax was withheld;

(*c*) A statement that, at the time the interest was received from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of the Federation (Article VII of the convention extends only to the Federation and not to the other Territories listed at § 507.501(a)), or, in the case of a corporation or other entity the owner was a foreign corporation or other entity managed or controlled in the Federation;

(*d*) A statement that the owner at no time during the taxable year in which the interest was received had a permanent establishment in the United States; and

(*e*) A statement that the owner is subject to Territory tax. One such substitute form shall be filed in duplicate with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by the taxpayer in the calendar year in which the excess tax was withheld and with respect to which such excess is released.

(ii) *Disposition of form.* The original and duplicate of substitute Form 1001–UK (and letter) shall be forwarded by the withholding agent to the Director, International Operations, Internal Revenue Service, Washington 25, D.C., in accordance with § 1.1461–2(b) of the Income Tax Regulations (26 CFR 1.1461–2(b)).

(5) *Interest on noncoupon bonds, royalties, rentals, pensions, and annuities.* If a taxpayer furnishes to the withholding agent the authorization of release prescribed in § 507.505(c)(2)(ii), § 507.503(b)(2), § 507.507(b)(2), or § 507.508(b)(2), and United States tax has been withheld at the statutory rate, on or after the effective date of the extension of the convention, from the interest, copyright royalties or other like amounts, real property rentals, natural resource royalties, pensions, or life annuities in respect to which such authorization is prescribed, the withholding agent shall release and pay over to the person from whom the tax was withheld—

(i) In the case of real property rentals and natural resource royalties, an amount which is equal to the difference between the tax so withheld from such items and the tax required to be withheld pursuant to § 507.507(b)(1); and

(ii) In the case of interest, copyright royalties or other like amounts, pensions, or life annuities, an amount which is equal to the tax so withheld from such items.

(b) *Amounts not to be released.* The provisions of this section do not apply to excess tax withheld at source which has been paid by the withholding agent to the Director, International Operations.

(c) *Statutory rate.* As used in this section, the term "statutory rate" means the rate prescribed by chapter 3 of the Internal Revenue Code of 1954 as though the convention had not come into effect.

§ 507.511 Information to be furnished in ordinary course.

For provisions relating to the exchange of information under Article XX of the convention, see § 1.1461–2(d) of the Income Tax Regulations (26 CFR 1.1461–2(d)).

Because it is necessary to bring into effect at the earliest practicable date the rules of this Treasury decision respecting release or refund of excess tax withheld, and exemption from, or reduction in rate of, withholding of tax, it is hereby found that it is impracticable to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946 or subject to the effective date limitation of section 4(c) of the Act.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 29, 1959.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

[F.R. Doc. 59–11167; Filed, Dec. 30, 1959; 8:48 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

PART 21—COMMISSIONED OFFICERS

Subpart T—Inactive Duty Training

The Public Health Service Regulations, Part 21—Commissioned Officers, is amended by adding the following new subpart:

Sec.
21.451 Inactive duty training—with pay.
21.452 Inactive duty for training without pay.

AUTHORITY: §§ 21.451 and 21.452 issued under sec. 501 (a) and (b), 63 Stat. 826, as amended; 37 U.S.C. 301 (a) and (b).

§ 21.451 Inactive duty training—with pay.

Commissioned officers of the Reserve Corps not on active duty may, when authorized by the Surgeon General, perform such periods of training, instruction, or duty as the Surgeon General may prescribe. For each period of service performed pursuant to this section of which the duration is not less than two hours nor more than one calendar day, the officer shall be entitled to compensation at the rate of 1/30th of his basic pay. The number of such periods for which compensation shall be paid shall be limited to 48 periods during a calendar year and to 12 periods during a calendar quarter. The Surgeon General shall prescribe for each officer so authorized the minimum number of such periods of service to be performed during a calendar quarter, the performance of which will be required to entitle the officer to compensation for any period of service performed during that quarter. The Surgeon General may require each officer performing such periods of service to file reports relative to each period. If a report is required for a period of service, the receipt of the report by the Service shall be a condition precedent to the payment of compensation for such period.

§ 21.452 Inactive duty for training without pay.

Commissioned officers of the Reserve Corps not on active duty may, when authorized by the Surgeon General, with their consent, perform without pay inactive duty for training or such other duty as may be prescribed by the Surgeon General.

[SEAL] JOHN D. PORTERFIELD,
Acting Surgeon General.

Dated: December 24, 1959.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 59–11162; Filed, Dec. 30, 1959; 8:48 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 18—POSTAL DELIVERY ZONE SYSTEM

Correction

In F.R. Doc. 59–10726, appearing at page 10384 of the issue for Tuesday, December 22, 1959, the example set forth in § 18.4(a)(3) should read as follows:

Lake Lane	29	
Lake Rd	20	
Lakeside Ave	28	
Lakeside Blvd	27	
Lakeview Ave	20	
Lakeview Dr	25	
Lakeview Rd	34	
Lakewood Dr	29	
Lamb Ave	22	
Lambert Ave	34	
Lamont	27	
Lancaster Rd	~~22~~	23
Lancelot Ave	34	
Landis Dr	26	
Landria Dr	25	
Landsdowne Rd	29	
Landsworth Ave	28	
Langhorne	22	
Langston ~~Ave.~~	20	
Lansing Ave	25	
Lanvale Ave	30	
Larchmont Lane	24	
Larcom Lane	29	
Larkwood Rd	29	
Larne Ave. (St)	24	
Larry	22	
Laurel	20	
Lawrence Rd	29	
Lawson	24	

Lawton	30
Leah Rd	30
Leake Ave	24
Lee Ave	26

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

EDITORIAL NOTE

The following parts of this chapter, issued under Public Laws 815 and 874, 81st Cong., as amended (64 Stat. 967, 1100), for years prior to 1960, although remaining effective with respect to grants made thereunder, are deleted from the Code of Federal Regulations: Parts 105, 111, 112, and 113.

PART 140—FEDERAL ASSISTANCE FOR IMPROVEMENT OF STATISTICAL SERVICES OF STATE EDUCATIONAL AGENCIES

Part 140 establishes regulations for the administration of section 1009 of the National Defense Education Act of 1958, as amended, 72 Stat. 1605, 20 U.S.C. 589.
Part 140 reads as follows:

AUTHORITY: §§ 140.1 to 140.15 issued under secs. 1001, 1009, 72 Stat. 1602, 1605, 20 U.S.C. 581, 589.

Subpart A—Definitions

§ 140.1 Definitions.

As used in this part:

(a) "Section 1009" means section 1009 of the National Defense Education Act of 1958, Public Law 85-864, as amended (72 Stat. 1605), 20 U.S.C. 589.

(b) "State" means a State, Puerto Rico, the District of Columbia, the Canal Zone, Guam, or the Virgin Islands.

(c) "Commissioner" means the United States Commissioner of Education, Department of Health, Education, and Welfare, or his delegates.

(d) "Department" means the Department of Health, Education, and Welfare.

(e) "State educational agency" or "State agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by State law.

(f) "Educational statistics" means the information, facts, and data concerning education in public and nonpublic educational institutions which are recorded in and reported by State or local systems of records and reports, or both, for the purpose of reflecting the condition and progress of organized education in the State.

(g) "State plan" or "plan" means the document or documents submitted by a State for approval by the Commissioner to comply with the requirements for participation under section 1009.

Subpart B—State Plans

§ 140.2 The State plan.

(a) *Purpose.* A basic condition for the payment of Federal funds to a State for improvement of statistical services of State educational agencies is the submission of a State plan meeting the requirements of section 1009. This plan shall include a description of the present educational statistical activities in the State educational agency and of the program(s) proposed by the State educational agency for improving the State and local statistical services, and the general policies and procedures to be followed in so doing, except that, in cases where the plan provides for an evaluation of the present educational statistics program, the submission of a description of the present program, in connection with the report of such evaluation when completed will be accepted as a substitute for the description in the State plan. The plan shall clearly show how each program under the plan is a "new program" or "an addition to an existing program" or "an expansion of an existing program" within the meaning of § 140.3. The description of each of the State agency programs shall set forth the scope of the agency activities and arrangements to be undertaken in carrying out such programs. The plan, when approved by the Commissioner, shall constitute the basis on which Federal grants will be made, as well as a basis for determining the propriety of State and local expenditures in which Federal participation is requested.

(b) *Submission.* The State plan and all amendments thereto shall be submitted to the Commissioner for approval by a duly authorized officer of the State agency. The plan shall indicate the official or officials authorized to submit plan material.

(c) *Amendment.* The administration of the programs must be kept in conformity with the approved State plan. Whenever there is any material change in the content or administration of a program, or when there has been a change in pertinent State law or in the organization, policies, or operations of the State educational agency affecting a program, under the plan, the State plan must be appropriately amended.

(d) *Certificate of the State educational agency.* The State plan and all amendments thereto must include as an attachment a certificate of the officer of the State educational agency authorized to submit the State plan to the effect (1) that the plan or amendment has been adopted by the State agency and that the plan, or plan as amended, will constitute the basis for operation and administration of the program(s) in which Federal participation under section 1009 will be requested and (2) that the program(s) is (are) either new program(s) or additions to or expansions of one or more existing programs within the meaning of § 140.3.

(e) *Certificate of the State Attorney General.* The plan must also include as an attachment a certificate of the State's Attorney General to the effect that the State agency named in the plan is the "State educational agency" as defined in § 140.1(e) which has authority under State law to submit the State plan and to carry out the program(s) described therein as the sole State agency responsible for the administration of the plan, and that all of the plan provisions are consistent with State law. If an official, other than the Attorney General of the State, is designated by State law to advise the State educational agency on legal matters and if the rulings of such official have the same legal effect with respect to the agency as rulings of the Attorney General have with respect to agencies advised by him, the certification may be made by such official.

§ 140.3 New programs and additions to or expansions of existing programs.

(a) *New programs.* A new program is a plan of operations and the activities to carry out such plan in which none of the principal elements involved were being employed before the program was initiated and which does one or more of the following: (1) Collects and disseminates educational information from a category of sources not before used, e.g., from kindergartens, libraries, junior colleges or private schools, the same types of information hitherto collected only from public schools, grades 1 through 12; or (2) collects, processes, or disseminates information of a new type which requires a different technique of collection, processing, or analysis, or a different type of publication, to make it useful for educational purposes, e.g., information concerning the causes of absence, or physical and health characteristics of children, or the effects of one or more of these on educational progress, collected in a State where only classroom and curricular information had been analyzed and disseminated before; or (3) by adopting a new and different type of analysis of processing, makes use of information hitherto collected for an entirely new and different purpose, e.g., the use of electronic equipment to analyze and show the relationship between educational progress and attendance, or health, or physical training, or participation in organized sports, or certain types of physical handicaps of children, or the social or educational background of teachers, etc. An evaluative study undertaken in connection with the State plan to determine ways of improving the State agency's program for providing educational statistics may also qualify as a new program within the meaning of this section.

(b) *Addition or expansion.* An addition to or expansion of an existing program is a plan of operations, and the activities to carry out such plan, which involve additional expenditures by the State educational agency for statistical services of the types set forth in section 1009(b) of the Act, over and above those hitherto expended for like services, and does one or more of the following: (1) Provides for collecting and disseminating increased amounts of data about educational areas in which the agency is already making data available; (2) provides for recording, collecting, or disseminating types of data about educational areas in which such types of data are not available; (3) increases the usefulness of educational data by making it more current; (4) increases the usefulness of educational data by improving its quality; or (5) increases the usefulness of collected data through improved analysis. (See also § 140.10.)

(c) *Time basis for measurement.* Whether a program is "new" or an "addition to" or "expansion of" an existing program will, for the fiscal year 1959, be measured against the activities being carried on by the State educational agency prior to September 2, 1958. For programs submitted for approval after fiscal year 1959, such improvement or increase will be measured against the activities being carried on by the State educational agency prior to the first day of the fiscal year in which the program was submitted for approval.

§ 140.4 State agency for administration.

(a) *Designation.* The State plan shall give the official name of the agency which will be the sole agency for administering the plan. Such agency shall meet the criteria set forth in § 140.1(e) defining "State educational agency."

(b) *Organization.* The State plan shall indicate the administrative unit(s) within the State agency that will be responsible for administering the program(s) set forth in the plan.

§ 140.5 Authority of State agency.

The State plan shall set forth the authority of the State agency under State law to submit the State plan and to administer the program(s) set forth therein. Citations to, or copies of, all directly pertinent statutes and interpretations of them by the appropriate State officials, whether by regulations, policy statements, opinions of the Attorney General, or court decisions, shall be furnished as a part of the plan. All copies must be certified as correct by an appropriate official.

§ 140.6 Custody of funds.

The State plan shall designate the officer who will receive and provide for the custody of funds to be expended under applicable State laws and regulations on requisition or order of the State agency.

§ 140.7 Records.

(a) *Fiscal administration.* The State plan shall describe the fiscal administration of the plan. Such administration shall be conducted in accordance with applicable State laws, policies, and procedures, which shall be identified in the plan or set forth in an appendix. Accounts and supporting documents relating to any program involving Federal participation shall be adequate to permit an accurate and expeditious audit of the program.

(b) *Disposal of records.* The State educational agency shall provide for keeping accessible and intact all records supporting claims for Federal grants or relating to the accountability of the grantee agency for expenditure of such grants and relating to the expenditure of matching funds: (1) For three years after the close of the fiscal year in which the expenditure was made by the State educational agency; or (2) until the State agency is notified that such records are not needed for program administration review; or (3) until the State agency is notified of the completion of the Department's fiscal audit, whichever is later.

(c) *Questioned expenditure.* The records involved in any claim or expenditure which has been questioned shall be further maintained until necessary adjustments have been made and the adjustments have been reviewed and cleared by the Department.

(d) *Records of equipment.* Where nonconsumable equipment which costs $10 or more per unit is purchased by the State with Federal financial participation, inventories and other records supporting accountability shall be maintained until the State agency is notified of the completion of the Department's review and audit covering the disposition of such equipment.

§ 140.8 Reports.

The State plan shall provide that the State agency will participate in such periodic conusltations and will make such reports to the Commissioner, at such time, in such form, and containing such information as the Commissioner may consider reasonably necessary to enable him to perform his duties under section 1009, and will comply with such provisions as he may find necessary to assure the correctness and verification of such reports.

Subpart C—Federal Financial Participation and Payment

§ 140.9 Federal participation.

Section 1009 authorizes payment of one-half (not to exceed $50,000 for each fiscal year) of the total sum expended by the State under the State plan. Such expenditures may include salaries and wages, purchase of equipment, rental of equipment, conferences and workshops, travel, printing and reproduction, and other expenditures that may be readily identified as having been made pursuant to the State plan and within the provisions and limitations of section 1009 and the regulations in this part. Federal financial participation will be available in expenditures made in accordance with the provisions of the State plan and the applicable State laws, rules, and regulations, and standards governing the use of State funds.

§ 140.10 Proration of costs.

Federal participation is available only with respect to that portion of any expenditure which is attributable to the new, added, or expanded aspects of a program under the State plan. The State plan shall specify the basis for identifying and prorating expenditures not attributable solely to such plan activities.

§ 140.11 Effective date of plan.

Since the Federal Government participates only in amounts expended under the State plan, there can be no Federal participation in any expenditures made before the plan is in effect. For the purposes of this section the earliest date on which a plan may be considered to be in effect is the date on which it is received in substantially approvable form by the Commissioner.

§ 140.12 Use of State rule in determining the fiscal year's allotment to which an expenditure is chargeable.

Each allotment to a State under section 1009 of the Act is made with respect to a fiscal year commencing on July 1 and ending the following June 30. State laws and regulations shall be followed by the States in determining to which fiscal year an expenditure by the State educational agency is chargeable for the purpose of earning the allotment. Each State, therefore, shall use the accounting basis (cash, accrual or obligation) applicable to its State accounting.

§ 140.13 Submission of annual estimates and reports.

(a) For each Federal fiscal year, the State agency shall submit upon forms prescribed and in accordance with procedures established by the Commissioner (1) a description of the specific activities to be carried out for that year in connection with each program set forth in the plan, and (2) a statement of the estimated sources of funds and expenditures to be made in carrying out the activities for the fiscal year. Expenditures which deviate from the details of the estimate will not be precluded from Federal participation if otherwise made in accordance with the approved plan and the regulations in this part.

(b) Following the end of each Federal fiscal year, the State agency shall submit upon forms prescribed and in accordance with procedures established by the Commissioner a report of the total expenditures and obligations made under the plan during the fiscal year.

§ 140.14 Provisions for payment.

Payments will be made in advance installments to States with approved plans on the basis of the annual estimates described in § 140.13. Adjustments of underpayments or overpayments or interest earned on Federal funds for any fiscal year will be made after the end of the fiscal year. In settling the accounts subsequent to the close of the fiscal year 1962, the State shall refund to the Commissioner any overpayment which may have been made under section 1009, or any unadjusted interest earned on Federal funds.

§ 140.15 **Effect of payments.**

Neither the approval of the State plan nor any payment to the State pursuant thereto shall be deemed to waive the right or duty of the Commissioner to withhold funds by reason of the failure of the State to observe, before or after such administrative action, any Federal requirements.

Dated: December 23, 1959.

[SEAL] WAYNE O. REED,
Acting U.S. Commissioner of Education.

Approved: December 28, 1959.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 59-11140; Filed, Dec. 30, 1959; 8:45 a.m.]

PART 141—FINANCIAL ASSISTANCE FOR STRENGTHENING SCIENCE, MATHEMATICS, AND MODERN FOREIGN LANGUAGE INSTRUCTION IN PUBLIC SCHOOLS

Part 141 establishes regulations for the administration of sections 301–304, inclusive, of Title III of the National Defense Education Act of 1958, Public Law 85–864, as amended, 72 Stat. 1588, 20 U.S.C. 441–444.

Part 141 reads as follows:

AUTHORITY: §§ 141.1 to 141.33 issued under sections 301–304, 1001, 72 Stat. 1588–1589, 1602; 20 U.S.C. 441–444, 581.

Subpart A—Definitions

§ 141.1 **Definitions.**

As used in this part:

(a) "Act" means the National Defense Education Act of 1958, Public Law 85–864, (72 Stat. 1580), 20 U.S.C. Ch. 17, as amended by Public Law 86–70, 73 Stat. 144.

(b) "Class" means a group of students assembled for instruction for a given period of time under one teacher, but not necessarily the same teacher, in a situation where the students are in the presence of the teacher.

(c) "Commissioner" means the United States Commissioner of Education, Department of Health, Education, and Welfare, or his delegate.

(d) "Department" means the Department of Health, Education, and Welfare.

(e) "Elementary school" means a school which provides elementary education, as determined under State law, as part of the public elementary, common, school system of the State.

(f) "Equipment," eligible for purchase through projects, means fixed or movable articles, not an integral part of a building, which are particularly appropriate for providing instruction in science, mathematics, or modern foreign language, and which are to be used by teachers in teaching or by students in learning in such courses in an instructional situation in a classroom or laboratory in an elementary or secondary school. The term does not include ordinary storage facilities, furniture or equipment which are appropriate for furnishing or equipping general classrooms. "Equipment" includes "materials," as that term is defined in paragraph (i) of this section, and audio-visual equipment, such as motion picture and slide projectors and recording equipment to be used in instructional programs of science, mathematics, or modern foreign language.

(g) "Fiscal year," as used with respect to reporting and accounting requirements herein, means the period beginning on the first day of July and ending on the following June 30.

(h) "Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision in a State.

(i) "Materials" means films, filmstrips, slides, tapes, discs, and recordings; books, pamphlets and periodicals for reference use (other than textbooks, as defined in paragraph (t) of this section), and other printed materials, such as maps and charts, which are particularly appropriate as media for instruction in the fields of science, mathematics, or modern foreign language or one of the branches of one of them. As distinguished from supplies, materials are items which with reasonable care and use may be expected to last for more than one year. (For example, chemicals and other supplies which are consumed in use may not be purchased under this program.)

(j) "Mathematics" means the study of shape, arrangement, and number through units of courses normally required of pupils in elementary grades, or for high school graduation, or for admission to post high school institutions, and through elective courses when taught by certified teachers of mathematics for those grades or subjects.

(k) "Modern foreign language" means a language, other than English, which is in current use as a common medium of communication by some substantial segment of the world population. (Latin is not a modern foreign language.)

(l) "Project," as applied to the acquisition of laboratory or other special equipment (including, if necessary, minor remodeling), means (1) a proposal submitted by a local educational agency, or agencies, or other public school authority, or authorities, below the State level, or (2) in cases where the State educational agency, acting in lieu of a local educational agency, operates one or more public elementary or secondary schools, a proposal submitted by the highest administrative officer of such a school or schools.

(m) "Public," as applied to any school, does not include a school of any agency of the United States.

(n) "School" means a division of instructional organization consisting of a group of pupils comprised of one or more grade groups, organized on a class basis as one unit with one or more teachers to give instruction of a defined type, and house in a school plant of one or more buildings. More than one school may be housed in a school plant of one or more when the elementary and secondary schools are housed in the same school plant.

(o) "Science" includes physical and biological sciences, but not the social sciences.

(p) "Secondary school" means a school which provides secondary education, as determined under State law, at grade 12 or below, as part of the public secondary, common, school system of the State. Such term may include a public junior college providing education beyond the 12th grade if determined under State law to be a part of the State public secondary school system.

(q) "Services": (1) "Supervisory services" means the services rendered by a qualified person(s) in the promotion, maintenance, and improvement of instruction in one or more of the fields of science, mathematics, and modern foreign language or any branch thereof. (2) "Related services" means services particularly applicable to the supervision of persons providing instruction in public elementary and/or secondary schools in the fields of science, mathematics, or modern foreign language, such as demonstrations of effective utilization of equipment, or the development of materials helpful in the improvement of such instruction; and the distribution to local educational agencies of materials so developed.

(r) "State" means a State, Puerto Rico, the District of Columbia, the Canal Zone, Guam, or the Virgin Islands.

(s) "State educational agency" or "State agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by State law.

(t) "Textbook" means a book, workbook, or manual, a copy of which is expected to be available for the individual use of each pupil.

Subpart B—State Plan—General Provisions

§ 141.2 State plan.

(a) *Purpose.* A basic condition for the payment of Federal funds to a State under sections 301–304 of the Act is a State plan meeting the requirements of section 303 of the Act. The plan shall set forth: (1) The programs of the State for acquiring laboratory or other special equipment suitable for use in providing education in science, mathematics, or modern foreign language instruction in public elementary and secondary schools, and for minor remodeling incidentally necessary to the use of such equipment; (2) the present supervisory and related services of the State agency; (3) the program for the expansion and improvement of supervisory and related services in the fields of science, mathematics, or modern foreign language; and (4) a description of the administration of the State plan. The programs set forth shall cover the four-year period during which Title III of the Act is in effect, shall describe the objectives established in these fields by the State educational agency and the methods to be used to achieve these objectives. The plan, when approved by the Commissioner, shall constitute the basis on which Federal grants will be made, as well as a basis for determining the propriety of State and local expenditures in which Federal participation is requested.

(b) *Submission.* The State plan and all amendments thereto shall be submitted to the Commissioner by a duly authorized officer of the State educational agency. The plan shall indicate the official or officials authorized to submit plan material.

(c) *Amendment.* The administration of the programs shall be kept in conformity with the approved State plan. Whenever there is any material change in the content or administration of a program, or when there has been a change in pertinent State law or in the organization, policies, or operations of the State educational agency affecting a program under the plan, the State plan shall be appropriately amended.

(d) *Certificate of the State educational agency.* The State plan and all amendments thereto shall include as an attachment a certificate of the officer of the State educational agency authorized to submit the State plan to the effect (1) that the plan or amendment has been adopted by the State agency and that the plan, or plan as amended, will consitute the basis for operation and administration of the program(s) in which Federal participation under sections 301–304 of Title III of the Act will be requested and (2) that the program(s) established under section 303(a)(5) of the Act is (are) either new program(s) or addition(s) to or expansion(s) of one or more existing programs within the meaning of Subpart F of this part.

(e) *Certificate of the State Attorney General.* The plan shall also include as an attachment a certificate by the State's Attorney General to the effect that the State agency named in the plan is the "State educational agency" as defined in § 141.1(s) which has authority under State law to submit the State plan and to carry out the programs described therein as the sole State agency responsible for administration of the plan, and that all of the plan provisions are consistent with State law. If an official, other than the Attorney General of the State, is designated by State law to advise the State educational agency on legal matters and if the rulings of such official have the same legal effect with respect to the agency as rulings of the Attorney General have with respect to agencies advised by him, the certificate may be made by such official.

§ 141.3 State Agency for administration.

(a) *Designation.* The State plan shall give the official name of the agency which will be the sole agency for administering the plan. Such agency shall meet the criteria set forth in § 141.1(s) defining "State educational agency."

(b) *Organization.* The State plan shall describe, by chart or otherwise, the organization of the State staff for the administration of the programs set forth in the plan. The lines of authority within the administrative unit or units responsible for the programs under the plan shall be shown, together with the administrative relationships of such unit or units to the rest of the State educational agency.

§ 141.4 Authority of State agency.

The State plan shall set forth the authority of the State educational agency under State law to submit the State plan and to administer the programs set forth therein, including a description of the supervisory relationships between the State agency and the local educational agencies. Citations to, or copies of, all directly pertinent statutes and interpretations of them by appropriate State officials whether by regulation, policy statements, opinions of the Attorney General or court decisions shall be furnished as part of the plan. All copies shall be certified as correct by an appropriate official.

§ 141.5 Custody of funds.

The State plan shall designate the officer who will receive and provide for the custody of all funds to be expended under applicable State laws and regulations on requisition or order of the State agency.

§ 141.6 Evaluation.

Provision shall be made for periodic reviews by the State agency of the programs under the State plan at least annually for the purpose of appraising the status of the programs and their administration in terms of the stated objectives.

§ 141.7 State fiscal procedures.

(a) *State administration.* The State plan shall describe the fiscal administration of the plan. Such administration shall be conducted in accordance with applicable State laws, policies, and procedures, which shall be identified in the plan or set forth in an appendix. Accounts and supporting documents relating to any program involving Federal participation shall be adequate to permit an accurate and expeditious audit of the program.

(b) *Audit of local projects.* All expenditures of local educational agencies claimed for Federal participation shall be audited either by the State or by appropriate auditors at the local level. The State plan shall indicate how the project accounts of local educational agencies and other agencies participating in the State plan will be audited; and, if the audit is to be carried out at the local level, how the State agency will secure information necessary to assure proper use of funds expended under sections 301–304, inclusive, of the Act by such local educational agencies.

§ 141.8 Qualifications of personnel.

(a) *Staff.* The State plan shall contain a description of the duties of and qualifications for professional positions for State educational personnel engaged in activities for which funds are to be used under the State plan. If these positions are established by State statutes or regulations and provide the above information, give citation to such statutes, or copies of such regulations.

(b) *Advisory Committee.* If a State Advisory Committee(s) is (are) used with respect to one or more aspects of this plan, the plan shall describe the general composition and method of establishment of the committee and its duties.

§ 141.9 Reports.

The State plan shall provide that the State agency will participate in such periodic consultations and will make such reports to the Commissioner, at such time, in such form, and containing such information as the Commissioner may consider reasonably necessary to enable him to perform his duties under sections 301–304, inclusive, of Title III of the Act and will comply with such provision as he may find necessary to assure the correctness and verification of such reports.

Subpart C—Federal Financial Participation

§ 141.10 Effective date of plan.

Since the Federal Government participates only in amounts expended under the State plan, there can be no Federal participation in any expenditure made before the plan is in effect. For the purposes of this section, the earliest date on which a plan may be considered in effect is the date on which it is received in substantially approvable form by the Commissioner.

§ 141.11 Federal participation in general.

(a) *Projects under section 303(a) (1).* The Federal Government will pay from each State's allotment an amount equal to one-half of the total sums expended by State and local educational agencies for the purchase of equipment and for the minor remodeling needed to make effective use of such equipment, when expended for an approved project under an approved State plan, as provided in section 303(a) (1) of the Act. There can be no Federal financial participation in the payment of obligations incurred or in expenditures made by local educational agencies for projects if the projects have not first been approved by the State agency under an approved plan.

(b) *Supervision and administration.* After fiscal year 1959, the Federal Government will pay from each State's allotment one-half of the total sum expended by the State for supervision, related services, and administration in programs established under the approved State plan in accordance with section 303(a) (5) of the Act.

§ 141.12 Proration of costs.

Federal participation is available only with respect to that portion of any expenditure which is attributable to an activity under the State plan. The State plan shall specify the basis for identifying and prorating expenditures not attributable solely to State plan activities.

§ 141.13 Allotment carry-over.

A State may earn its allotment under section 302(a) of the Act for projects under section 303(a) (1) until the end of the fiscal year following the year for which the allotment is made.

§ 141.14 Application of State rules.

Subject to the provision and limitations of the Act and this chapter, Federal financial participation will be available only in expenditures made under the plan in accordance with applicable State laws, rules, regulations, and standards governing expenditure of State and local funds.

§ 141.15 Use of State rule in determining the fiscal year's allotment to which an expenditure is chargeable.

Each allotment to a State under section 302(a), 302(b), or 1008 of the Act is made with respect to a fiscal year commencing on July 1 and ending the following June 30. State and local laws and regulations shall be followed by the States in determining to which fiscal year an expenditure by the State or local educational agency is chargeable for the purpose of earning the allotment. Each State, therefore, shall use the accounting basis (cash, accrual or obligation) applicable to its State or local accounting.

§ 141.16 Reimbursement of local educational agencies.

State plans may provide that funds may be transferred to local educational agencies or other school authorities pursuant to a plan program either in advance or as reimbursement in amounts not to exceed the cost of approved projects. Such transfers shall not count as amounts "expended" for the purposes of earning Federal financial participation. (See §§ 141.11 and 141.15.)

§ 141.17 Disposal of records.

(a) *General rule.* The State educational agency shall provide for keeping accessible and intact all records supporting claims for Federal grants or relating to the accountability of the grantee agency for expenditure of such grants and relating to the expenditure of matching funds: (1) For three years after the close of the fiscal year in which the expenditure was made by the State or local educational agency; or (2) until the State agency is notified that such records are not needed for program administration review; or (3) until the State agency is notified of the completion of the Department's fiscal audit, whichever is later.

(b) *Questioned expenditure.* The records, involved in any claim or expenditure which has been questioned, shall be further maintained until necessary adjustments have been made and the adjustments have been reviewed and cleared by the Department.

(c) *Records of equipment.* Where nonconsumable equipment which costs $10 or more per unit is purchased by the State with Federal financial participation under the State plan for use in programs for supervision, related services or administration, inventories and other records supporting accountability shall be maintained until the State agency is notified of the completion of the Department's review and audit covering the disposition of such equipment. The maintenance of such inventories is not required for equipment acquired under projects approved in accordance with section 303(a) (1) of the Act; for such equipment only records relating to acquisition need be maintained for the period applicable under paragraphs (a) and (b) of this section.

Subpart D—Federal Payment Procedures

§ 141.18 Annual estimates and financial reports.

(a) *Content.* For each fiscal year, the State agency shall submit, in accordance with procedures established by the Commissioner:

(1) A description of the activities to be carried on under the plan during the ensuing fiscal year; and

(2) An estimate upon official forms of the expenditures to be made in carrying out these activities.

(b) *Effect of estimates.* Expenditures will not be precluded from Federal financial participation because of minor deviations from the information submitted pursuant to paragraph (a) of this section if they are otherwise made in accordance with the approved plan and the regulations in this part.

(c) *Reports.* Following the end of each fiscal year, the State agency shall submit, in accordance with procedures established by the Commissioner, a report of the total expenditures and obligations made under the plan during the fiscal year.

§ 141.19 Federal payments.

Payments will be made semi-annually in advance to States with approved plans on the basis of estimates and reports of expenditures referred to in §§ 141.18 and 141.21. In making payments, such adjustments of underpayments or overpayments for any prior period will be made as are indicated by the accounts for such prior period. In settling accounts subsequent to the close of fiscal year 1962, the State shall refund to the Commissioner any overpayment which might have been made under section 304 of Title III of the Act.

§ 141.20 Effect of Federal payments.

(a) *No waiver.* Neither the approval of the State plan nor any payment to the State pursuant thereto shall be deemed to waive the right or duty of the Commissioner to withhold funds by reason of the failure of the State to observe, before or after such administrative action, any Federal requirements.

(b) *Settlement of accounts.* The final amount to which the State is entitled for any period is determined on the basis of expenditures under the State plan with respect to which Federal financial participation is authorized.

§ 141.21 Request for payment of Federal funds.

Prior to the beginning of each semi-annual fiscal period, the State agency shall submit to the Commissioner upon official forms a statement of estimated total expenditures for activities under the plan during such semi-annual period, indicating the amount of funds available to pay the non-Federal share of the amount estimated.

§ 141.22 Certifying payment.

Payment will be certified after: (1) the State has on file in the Office of Education a plan approved by the Commissioner; (2) the estimates and reports required in §§ 141.13 and 141.21 have been reviewed; and (3) the Commissioner is satisfied that the State will be able to carry out the plan during the current fiscal year.

§ 141.23 Interest on Federal grants.

Interest earned on Federal grants shall be credited to the United States. The State agency shall submit as a part of each fiscal report a statement showing the amount of interest earned on Federal funds during that period. Ordinarily such interest earnings will be considered in the adjustment of the Federal-State account; but for the last year of the program, payment of interest shall be made by the State to the Commissioner.

Subpart E—Acquisition of Equipment

§ 141.24 Description of programs.

The State plan shall describe separately the programs for the acquisition of equipment and minor remodeling in terms of the instructional field to be served and the grade level or levels for which equipment is to be acquired.

§ 141.25 Equipment.

(a) *Purchasing equipment.* Purchase of equipment and materials under section 303(a)(1) shall be in compliance with standards which have been filed with the Commissioner pursuant to § 141.28. Equipment acquired under section 303(a)(1) may be new or used equipment so long as fair value is received.

(b) *Purchase of materials for constructing equipment.* Expenditures in which Federal participation is claimed may not include the cost of raw or processed building materials and supplies or component parts to be made into finished products or complete equipment units to be sold, or to be used by pupils, teachers, or other persons for individual, family, general school or business purposes; however, the cost of such materials, supplies, or parts for construction of equipment for use in instruction in a science, mathematics, or modern foreign language field may be considered for participation.

§ 141.26 Minor remodeling.

(a) *Purposes.* Federal participation is available in minor remodeling if it is: (1) Needed to make effective use of equipment acquired through an approved project of which the minor remodeling is a part; (2) performed within the space in which the equipment is to be used; and (3) performed in a previously completed building.

(b) *Maintenance.* The cost of building maintenance may not be included as minor remodeling.

§ 141.27 Priorities.

The State plan shall contain the principles established by the State educational agency for determining priorities for projects submitted to the State agency for approval under the State plan. The State agency shall indicate that it will apply these principles to determine the order of approval for undertaking the projects submitted under the plan.

§ 141.28 Standards.

For each program described in accordance with § 141.24, the State plan shall contain the equipment standards to be used by the State agency as the basis for approving projects under such program.

§ 141.29 Hearings.

The State plan shall describe the procedure for giving a timely opportunity to any aggrieved project-applicant to request and receive a hearing before the State educational agency with reference to any project presented to the State agency for approval under the plan.

Subpart F—Supervision and Administration

§ 141.30 Programs for supervision and related services.

The State plan shall contain a description of the programs for the expansion and improvement of the State agency's supervisory and related services to public elementary and secondary schools in each of the fields of science, mathematics, and modern foreign language instruction. The Federal Government will participate only in the additional amounts expended for such supervisory and related services. The description shall therefore clearly show how and to what extent each program provides a new service or is an improvement or expansion of an existing service in the nature of supervision of instruction or a service which effectively contributes to the supervisory service to be rendered. The description of each of the programs shall set forth the scope of the agency's activities and arrangements to be undertaken in carrying out such programs.

§ 141.31 Expansion or improvement.

An expansion or improvement of an existing program of supervisory or related services is a program which involves additional expenditures by the State educational agency for such services to public elementary or secondary schools in the fields of science, mathematics, or modern foreign language over and above those hitherto expended for like services and does one or more of the following: (1) Provides for the employment of additional qualified personnel to render such services; (2) provides for rendering additional or improved service to local educational agencies; (3) extends the services already being rendered to more local educational agencies.

§ 141.32 Time basis for measurement.

Whether a program is an "expansion" or "improvement" of an existing program will, for the fiscal year 1959, be measured against the activities being carried on by the State educational agency prior to September 2, 1958. For those States which first submit plans after fiscal year 1959, and with respect to additional programs submitted after fiscal year 1959, improvement or expansion in such programs will be measured against the activities being carried on by the State educational agency prior to the first day of the fiscal year in which the program is submitted for approval. (See § 141.31.)

§ 141.33 Eligible cost.

(a) *Types.* The cost of administration, supervisory, and related services in science, mathematics, and modern foreign language in which Federal participation may be claimed include such categories of expense as the following, to the extent that the items of cost are attributable to the programs approved under the State plan: (1) Salaries of the staff, both clerical and professional; (2) consultants' fees; (3) committees, workshops and conferences, including the travel of those representing the State agency or acting in an advisory capacity to it; (4) office equipment and equipment necessary for State programs of supervision of instruction in the fields of science, mathematics, or modern foreign language; (5) communication; (6) supplies, printing, and printed materials, including reference books; (7) office space as provided in paragraph (b) of this section; (8) employer's contributions to retirement, workmen's compensation, and other welfare funds maintained for one or more general classes of employees of the State agency; and (9) travel of staff and consultants.

(b) *Office space.* Federal financial participation shall be available in expenditures for office space (including the cost of utilities and janitorial services) in privately or publicly owned buildings if: (1) The expenditures for the space are necessary, reasonable, and properly related to the efficient administration of the plan or the expansion or improvement of supervisory or related services covered by the plan; (2) the State agency will receive the benefits of the expenditures during the period of occupancy commensurate with such expenditures; (3) the amounts paid by the State agency are not in excess of comparable rental in the particular locality; (4) the expenditures represent an actual cost to the State agency; and (5) in publicly owned buildings, like charges are made to other agencies occupying similar space.

Dated: December 23, 1959.

[SEAL] WAYNE O. REED,
Acting U.S. Commissioner of Education.

Approved: December 28, 1959.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 59-11142; Filed, Dec. 30, 1959; 8:45 a.m.]

PART 142—LOANS TO PRIVATE NONPROFIT SCHOOLS FOR ACQUISITION OF EQUIPMENT FOR STRENGTHENING INSTRUCTION IN SCIENCE, MATHEMATICS, AND MODERN FOREIGN LANGUAGE

Part 142 establishes regulations for the administration of section 305 of Title III of the National Defense Education Act of 1958, Public Law 85-864, as amended, (72 Stat. 1590, 20 U.S.C., 445).

Part 142 reads as follows:

AUTHORITY: §§ 142.1 to 142.14 issued under sections 305, 1001, 72 Stat. 1590, 1602; 20 U.S.C. 445, 581.

Subpart A—Scope of Section 305

§ 142.1 Purpose of loan program.

The Federal Government makes loan funds available under the provisions of section 305 of the Act to eligible private nonprofit elementary and secondary schools for the acquisition of equipment and materials suitable for use in strengthening instruction in science, mathematics, and modern foreign language and for minor remodeling of laboratory or other space used for such equipment and materials.

Subpart B—Definitions

§ 142.2 Definitions.

As used in this part:

(a) "Act" means the National Defense Education Act of 1958, Public Law 85–864 (72 Stat. 1580), 20 U.S.C., Ch. 17, as amended by Public Law 86–70, 73 Stat. 144.

(b) "Application" means a request to borrow funds from the United States under section 305(b) of the Act, submitted in such form as the Commissioner may require.

(c) "Commissioner" means the United States Commissioner of Education, Department of Health, Education, and Welfare, or his delegate.

(d) "Elementary school" means a school which provides elementary education as determined under State law.

(e) "Equipment" means fixed or movable articles, not an integral part of a building, which are particularly appropriate for providing instruction in science, mathematics, or modern foreign language, and which are to be used by teachers in teaching or by students in learning in such courses in an instructional situation in a classroom or laboratory in an elementary or secondary school. The term does not include ordinary storage facilities, furniture, or equipment which are appropriate for furnishing or equipping general classrooms. "Equipment" includes "materials," as that term is defined in paragraph (f) of this section, and audio-visual equipment, such as motion picture and slide projectors and recording equipment to be used in instructional programs of science, mathematics, or modern foreign languages.

(f) "Materials" means films, filmstrips, slides, tapes, discs, and recordings; books, pamphlets and periodicals for reference use (other than textbooks, as defined in paragraph (p) of this section), and other printed materials, such as maps and charts which are particularly appropriate as media for instruction in the fields of science, mathematics, or modern foreign language, or one of the branches of one of them. As distinguished from supplies, materials are items which with reasonable care and use may be expected to last for more than one year. (For example, chemicals and other supplies which are consumed in use, may not be purchased under this program.)

(g) "Mathematics" means the study of shape, arrangement, and number through units or courses normally required of pupils in elementary grades, or for high school graduation, or for admission to post high school institutions, and through elective courses.

(h) "Modern foreign language" means a language, other than English, which is in current use as a common medium of communication by some substantial segment of the world population. (Latin is not a modern foreign language.)

(i) "Nonprofit," as applied to a school, means a school, owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(j) "Private," as applied to a school, means a school, established by an agency other than a State or a political subdivision or any combination of either or both, and which is supported in part, or in whole, by other than public funds and is administered and controlled by other than publicly elected or appointed officials.

(k) "Project" means a proposal by a school, as detailed in a loan application, to strengthen instruction in science, mathematics, or modern foreign language, through the acquisition of laboratory or other special equipment (including, if necessary, minor remodeling).

(l) "School" means an instructional organization consisting of a group of pupils comprised of one or more grade groups, organized as one unit with one or more teachers to impart education classified as elementary or secondary education under State law, and housed in one school plant of one or more buildings. (Secondary education does not include any education provided beyond the twelfth grade level.)

(m) "Science" includes physical and biological sciences, but not the social sciences.

(n) "Secondary school" means a school which provides secondary education as determined under State law at the twelfth grade level or below.

(o) "State" means a State, Puerto Rico, the District of Columbia, the Canal Zone, Guam, or the Virgin Islands.

(p) "Textbook" means a book, workbook or manual, a copy of which is expected to be available for the individual use of each pupil.

Subpart C—Application

§ 142.3 Filing application.

A school desiring to borrow funds shall file an application with the Commissioner. Such application shall include satisfactory evidence of the school's eligibility as a private nonprofit elementary or secondary school, and of its legal identity.

§ 142.4 Amount of loan.

(a) *Request by applicant.* Each application shall include:

(1) A request for a loan in a definite amount;

(2) A proposed schedule of repayment of principal, with interest, within 10 years of the date of the loan; and

(3) Information concerning the financial condition and credit of the applicant and of any proposed guarantor.

(b) *Limitation on amount.* A loan shall be limited to the amount which may reasonably be expected to be expended for the acquisition of equipment and for minor remodeling, without undue delay after receipt of the funds.

§ 142.5 Proposal for the acquisition of equipment.

(a) *The list.* Each application shall contain an itemized list of the equipment which is proposed to be acquired with the loan funds and the estimated cost thereof. The list shall be organized by subject of instruction and grade level at which the equipment is to be used.

(b) *Equipment.* Each application shall show that the equipment included in the list is suitable as to type, quantity and quality for use in strengthening instruction in science, mathematics or modern foreign language in the applying school. Equipment to be acquired may be either new or used so long as fair value is received.

§ 142.6 Proposal for minor remodeling.

(a) *Purposes and conditions.* Minor remodeling for which loan funds are to be used shall be:

(1) Needed to make effective use of equipment being acquired with the loan funds;

(2) Performed within the space in which the equipment is to be used; and

(3) Performed in a previously completed building.

(b) *Maintenance.* The cost of building maintenance shall not be paid with loan funds.

(c) *Building ownership.* Minor remodeling may be done in a building owned by or under lease to the applying school. If the building is leased, the leasehold interest shall justify the cost of the remodeling to be accomplished with loan funds.

(d) *Content of application.* If the application contains a request for funds for minor remodeling, it shall specify the work to be done, the cost thereof, and show that the remodeling is necessary to make effective use of equipment included in the list required by § 142.5(a).

§ 142.7 Authorization.

(a) *Authorized representative.* The application shall be signed by the authorized representative of the school and shall contain satisfactory evidence of his authority:

(1) To submit an application to borrow money for the use of the school; and

(2) To represent the governing authority of the school in negotiating with respect to the loan.

(b) *Identity of the officer to sign note.* The application shall also identify the officer empowered to sign the promissory note, and shall indicate the basis of his authority.

§ 142.8 Additional information.

The application shall contain such additional information as the Commissioner may deem necessary.

Subpart D—Loan Procedures

§ 142.9 Review of application.

Action on a loan application will be based on a review of information contained in the application and any other pertinent data which may be obtained.

§ 142.10 Promissory note.

(a) *Execution of note.* After the Commissioner approves an application, he will request the legal entity responsible for the financial obligations of the school to execute a promissory note. The note will include a schedule of payments of principal, with interest to the date of payment on the unpaid principal of the loan.

(b) *Payment to school.* After receipt of the duly executed promissory note, the Commissioner will cause the loan funds to be paid to the school.

(c) *Return of note.* The duly executed promissory note shall be returned within a reasonable time. If not so returned, the Commissioner may rescind approval of the loan application.

§ 142.11 Loan conditions.

(a) *Assurance of repayment.* All loans shall be of such sound value or so secured as reasonably to assure repayment.

(b) *Use of loan funds.* All loans shall be on condition that the funds borrowed will be used only for the acquisition of equipment and minor remodeling, substantially similar to that described in the approved application.

(c) *Time for use.* Loan funds shall be used by the school within a reasonable time.

(d) *Unused and misused funds.* Loan funds that are not used within a reasonable time for the purposes set out in paragraph (b) of this section, and loan funds that are used for other purposes, shall become immediately payable in full, together with all interest accrued thereon. If the total amount not used for the acquisition of equipment or minor remodeling under an approved project does not exceed fifty dollars, this subsection shall not apply.

(e) *Disposal and diversion of equipment acquired.* During the period of the loan the equipment acquired with loan funds shall not be disposed of nor its use diverted to any purpose not specified in the Act or Regulations.

(1) In the event of such disposal or diversion of use, the balance of the loan shall, at the option of the Commissioner, become at once due and payable, together with accrued interest thereon.

(2) Any diversion not consistent with the Act and Regulations, and any disposal, shall be reported to the Commissioner.

(f) *Time of acquisition.* Loan funds shall not be used for the acquisition of equipment (and minor remodeling) for which firm commitments have been made prior to the approval of the application.

§ 142.12 Interest.

(a) *Determination of interest rate.* Loans shall bear interest at the rate arrived at by adding one-quarter of one per centum per annum to the rate which the Secretary of the Treasury determines to be equal to the current average yield on all outstanding marketable obligations of the United States as of the last day of the month preceding the date the application for the loan is approved and by adjusting the result so obtained to the nearest one-eighth of one per centum.

(b) *Effective interest rate.* The interest rate in effect at the time a loan is approved shall remain in effect for the life of the loan.

(c) *Accrual of interest.* Interest shall accrue from the date of payment of loan principal to the school.

§ 142.13 Repayment.

(a) *Date of maturity.* Loans shall mature and be repayable on such date as may be agreed to by the Commissioner and the borrower, but such date shall not be more than ten years after the date on which such loan was made.

(b) *Prepayment.* Loans may be prepaid in full or in part at any time, with interest to the date of payment, without penalty for prepayment in advance of schedule.

§ 142.14 Records and reports.

(a) *Records.* Each school that receives a loan shall maintain accessible and intact, for audit purposes, all records supporting the use of loan funds until the loan has been repaid in full, or until three years after receipt of loan funds, whichever is later.

(b) *Reports.* Each school that receives a loan shall furnish such reports regarding the use of loan funds as the Commissioner may require.

Dated: December 23, 1959.

[SEAL] WAYNE O. REED,
Acting U.S. Commissioner of Education.

Approved: December 28, 1959.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 59-11139; Filed, Dec. 30, 1959; 8:45 a.m.]

PART 143—GUIDANCE, COUNSELING, AND TESTING; IDENTIFICATION AND ENCOURAGEMENT OF ABLE STUDENTS—STATE PROGRAMS

Part 143 establishes regulations for the administration of sections 501–504 (a), inclusive, of Title V of the National Defense Education Act of 1958, Public Law 85-864, as amended, 72 Stat. 1592, 20 U.S.C. 481–484.

Part 143 reads as follows:

Subpart A—Definitions

Subpart B—State Plan—General Provisions

Subpart C—Federal Financial Participation

Subpart D—Federal Payment Procedures

Subpart E—State Agency Program Activities

Subpart F—Program for Testing Aptitudes and Ability

Subpart G—Guidance and Counseling Programs in Public Secondary Schools

AUTHORITY: §§ 143.1 to 143.34 issued under sections 501–504, 1001, 72 Stat. 1592–1593, 1602; 20 U.S.C. 481–484, 581.

Subpart A—Definitions

§ 143.1 Definitions.

As used in this part:

(a) "Act" means the National Defense Education Act of 1958, Public Law 85-864 (72 Stat. 1580), 20 U.S.C. Ch. 17, as amended by Public Law 86-70, 73 Stat. 144.

(b) "Class" means a group of students assembled for instruction for a given period of time under one teacher, but not necessarily the same teacher, in a situation where the students are in the presence of the teacher.

(c) "Commissioner" means the United States Commissioner of Education, Department of Health, Education, and Welfare, or his delegate.

(d) "Department" means the Department of Health, Education, and Welfare.

(e) "Fiscal year," as used with respect to reporting and accounting requirements herein, means the period beginning on the first day of July and ending on the following June 30.

(f) "Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of public secondary schools in a city, county, township, school district, or other political subdivision in a State.

(g) "Public," as applied to any school, does not include a school of any agency of the United States.

(h) "Secondary school" means those grades which provide secondary education as determined under State law, not beyond grade 12, on an organized class basis, with one or more teachers to give instruction of a defined type, and housed in a school plant of one or more buildings. "Public secondary school" means those secondary schools operated as part of the public secondary, common, school system of the State.

(i) "State" means a State, Puerto Rico, the District of Columbia, the Canal Zone, Guam, or the Virgin Islands.

(j) "State educational agency" or "State agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by State law.

Subpart B—State Plan—General Provisions

§ 143.2 State plan.

(a) *Purpose.* A basic condition for the payment of Federal funds to a State for the establishment, maintenance, or extension in secondary schools of guidance and counseling programs and for testing programs to identify students with outstanding aptitudes and ability is a State plan meeting the requirements of section 503(a) of the Act. The plan shall include a general description of the present guidance, counseling, and testing activities of the State and local educational agencies and the guidance, counseling, and testing programs to be established under the plan. The plan shall set forth the objectives to be accomplished through the proposed programs during the four-year period during which Title V of the Act is in effect, and shall show how the realization of these objectives will result in more adequate guidance, counseling, and testing in secondary schools in the State. The plan, when approved by the Commissioner, shall constitute the basis on which Federal grants will be made, as well as a basis for determining the propriety of State and local expenditures in which Federal participation is requested.

(b) *Submission.* The State plan and all amendments thereto shall be submitted to the Commissioner by a duly authorized officer of the State educational agency. The plan shall indicate the official or officials authorized to submit plan material.

(c) *Amendment.* The administration of the programs shall be kept in conformity with the approved State plan. Whenever there is any material change in the content or administration of a program, or when there has been a change in pertinent State law or in the organization, policies, or operations of the State educational agency affecting a program under the plan, the State plan shall be appropriately amended.

(d) *Certificate of the State educational agency.* The State plan and all amendments thereto shall include as an attachment a certificate of the officer of the State educational agency authorized to submit the State plan to the effect that the plan or amendment has been adopted by the State agency and that the plan, or plan as amended, will constitute the basis for operation and administration of the program(s) in which Federal participation under sections 501–504(a), inclusive, will be requested.

(e) *Certificate of the State Attorney General.* The plan shall also include as an attachment a certificate by the State's Attorney General to the effect that the State agency named in the plan is the "State educational agency" as defined in § 143.1(j) which has authority under State law to submit the State plan and to carry out the programs described therein as the sole State agency responsible for the administration of the plan, and that all of the plan provisions are consistent with State law. If an official, other than the Attorney General of the State, is designated by State law to advise the State educational agency on legal matters and if the rulings of such official have the same legal effect with respect to the agency as rulings of the Attorney General have with respect to agencies advised by him, the certificate may be made by such official.

§ 143.3 State agency for administration.

(a) *Designation.* The State plan shall give the official name of the agency which will be the sole agency for administering the plan. Such agency shall meet the criteria set forth in § 143.1(j) defining "State educational agency."

(b) *Organization.* The State plan shall describe, by chart or otherwise, the organization of the State staff for the administration of the programs set forth in the plan. The lines of authority within the administrative unit or units responsible for the programs under the plan shall be shown, together with the administrative relationships of such unit or units to the rest of the State educational agency.

§143.4 Authority of State agency.

The State plan shall set forth the authority of the State educational agency under State law to submit the State plan and to administer the programs set forth therein, including a description of the supervisory relationships between the State agency and the local educational agencies. Citations to, or copies of, all directly pertinent statutes and interpretations of them by appropriate State officials, whether by regulation, policy statements, opinions of the Attorney General, or court decisions shall be furnished as part of the plan. All copies shall be certified as correct by an appropriate official. If the agency is not authorized under State law to expend funds for testing children attending one or more secondary schools in the State, the authorized officer of the agency shall so certify, indicating the schools or types of schools thus excluded and giving the legal basis for his conclusion. In such cases, the Commissioner will arrange for testing such children under the authority contained in section 504(b) of the Act.

§ 143.5 Custody of funds.

The State plan shall designate the officer who will receive and provide for the custody of all funds to be expended under applicable State laws and regulations on requisition or order of the State agency.

§ 143.6 State fiscal procedures.

(a) *State administration.* The State plan shall describe the fiscal administration of the plan. Such administration shall be conducted in accordance with applicable State laws, policies, and procedures, which shall be identified in the plan or set forth in an appendix. Accounts and supporting documents relating to any program involving Federal participation shall be adequate to permit an accurate and expeditious audit of the program.

(b) *Audit of local educational agencies.* All expenditures of local educational agencies claimed for Federal participation shall be audited either by the State or by appropriate auditors at the local level. The State plan shall indicate how the accounts of local educational agencies participating in the State plan will be audited; and, if the audit is carried out at the local level, how the State agency will secure information necessary to assure proper use of funds expended under sections 503 and 504(a) of Title V of the Act by such local educational agencies.

§ 143.7 Qualifications of State positions.

(a) *Staff.* The State plan shall contain a description of the duties of and qualifications for professional positions for State personnel engaged in guidance, counseling, and testing activities for which funds are to be used under the State plan. If these positions are established by State statutes or regulations and provide the above information, give citation to such statutes, or copies of such regulations.

(b) *Advisory committee.* If a State advisory committee on guidance, counseling, or testing is established, the plan shall describe the general composition and duties of this committee.

§ 143.8 State agency program activities.

The plan shall include the program of the State agency for the direction, coordination, and supervision of operations under the plan. Provision shall be made for periodic program reviews by the State agency at least annually for the purpose of appraising the status of the programs in terms of the stated objectives.

§ 143.9 **Local school programs, personnel, and facilities.**

If Federal funds are to be used to carry out the State program on the local level, the State educational agency shall have responsibility for establishing standards and procedures under the plan for the approval of local educational agency activities in guidance, counseling, and testing in which there is to be Federal participation. The plan shall specify the methods the State will use to assure that activities of the local educational agencies are in accordance with the State plan.

§ 143.10 **Reports.**

The State plan shall provide that the State agency will participate in such periodic consultations and will make such reports to the Commissioner, at such time, in such form, and containing such information as the Commissioner may consider reasonably necessary to enable him to perform his duties under Part A, Title V, of the Act and will comply with such provisions as he may find necessary to assure the correctness and verification of such reports.

Subpart C—Federal Financial Participation

§ 143.11 **Effective date of plan.**

Since the Federal Government participates only in amounts expended under the State plan, there can be no Federal participation in any expenditure made before the plan is in effect. For the purposes of this section, the earliest date on which a plan may be considered in effect is the date on which it is received in substantially approvable form by the Commissioner.

§ 143.12 **Federal participation in general.**

After fiscal year 1959, the Federal Government will pay from each State's allotment, as reduced by expenditures required pursuant to section 504(b) of the Act, one-half of the total sum expended under the approved State plan: (a) By the State and local educational agencies in the establishment, maintenance, or extension of guidance, counseling, or testing programs approved under the State plan; and (b) for State agency supervision and related services with respect to such programs. There can be no Federal financial participation in the payment of obligations incurred or in expenditures made by local educational agencies for local guidance and counseling programs if the programs have not first been approved by the State agency under an approved plan.

§ 143.13 **Proration of costs.**

Federal participation is available only with respect to that portion of any expenditure which is attributable to an activity under the State plan. The State plan shall specify the basis for identifying and prorating expenditures not attributable solely to State plan activities.

§ 143.14 **Application of State rules.**

Subject to the provisions and limitations of the Act and this chapter, Federal financial participation will be available only in expenditures made under the plan in accordance with applicable State laws, rules, regulations, and standards governing expenditures of State and local funds.

§ 143.15 **Use of State rule in determining the fiscal year's allotment to which an expenditure is chargeable.**

Each allotment to a State under section 502 or 1008 of the Act is made with respect to a fiscal year commencing on July 1 and ending the following June 30. State and local laws and regulations shall be followed by the States in determining to which fiscal year an expenditure by the State or local educational agency is chargeable for the purpose of earning the allotment. Each State, therefore, shall use the accounting basis (cash, accrual or obligation) applicable to its State or local accounting.

§ 143.16 **Reimbursement of local educational agencies.**

State plans may provide that funds may be transferred to local educational agencies or other school authorities pursuant to a plan program either in advance or as reimbursement. Reimbursement or payment need not be uniform to all local educational agencies (i.e., the State plan may provide a method by which the ratio of Federal and State reimbursement to total expenditures may be adjusted to local needs). Such transfers shall not count as sums "expended" for the purposes of earning Federal financial participation (see §§ 143.12 and 143.15).

§ 143.17 **Disposal of records.**

(a) *General rule.* The State educational agency shall provide for keeping accessible and intact all records supporting claims for Federal grants or relating to the accountability of the grantee agency for expenditure of such grants and relating to the expenditure of matching funds: (1) for three years after the close of the fiscal year in which the expenditure was made by the State or local educational agency; (2) until the State agency is notified that such records are not needed for program administration review; or (3) until the State agency is notified of the completion of the Department's fiscal audit, whichever is later.

(b) *Questioned expenditures.* The records involved in any claim or expenditure which has been questioned shall be further maintained until necessary adjustments have been made and the adjustment have been reviewed and cleared by the Department.

(c) *Records of equipment.* Where nonconsumable equipment which costs $10 or more per unit is purchased with Federal financial participation, inventories and other records supporting accountability shall be maintained until the State agency is notified of the completion of the Department's review and audit covering the disposition of such equipment.

Subpart D—Federal Payment Procedures

§ 143.18 **Annual estimates and financial reports.**

(a) *Content.* For each fiscal year, the State agency shall submit, in accordance with procedures established by the Commissioner:

(1) A description of the activities to be carried on under the plan during the ensuing fiscal year; and

(2) An estimate upon official forms of the expenditures to be made in carrying out these activities.

(b) *Effect of estimates.* Expenditures will not be precluded from Federal financial participation because of minor deviations from the information submitted pursuant to paragraph (a) of this section if they are otherwise made in accordance with the approved plan and the regulations in this part.

(c) *Reports.* Following the end of each fiscal year, the State agency shall submit, in accordance with procedures established by the Commissioner, a report of the total expenditures and obligations made under the plan during the fiscal year.

§ 143.19 **Federal payments.**

Payments will be made semi-annually in advance to States with approved plans on the basis of estimates and reports of expenditures provided for in §§ 143.18 and 143.21. In making payments, such adjustments of underpayments or overpayments for any prior period will be made as are indicated by the accounts for such prior period. In settling accounts subsequent to the close of fiscal year 1962, the State shall refund to the Commissioner any overpayment which may have been made under Title V of the Act.

§ 143.20 **Effect of Federal payments.**

(a) *No waiver.* Neither the approval of the State plan nor any payment to the State pursuant thereto shall be deemed to waive the right or duty of the Commissioner to withhold funds by reason of the failure of the State to observe, before or after such administrative action, any Federal requirements.

(b) *Settlement of accounts.* The final amount to which the State is entitled for any period is determined on the basis of expenditures under the State plan with respect to which Federal financial participation is authorized.

§ 143.21 **Request for payment of Federal funds.**

Prior to the beginning of each semi-annual fiscal period, the State agency shall submit to the Commissioner upon official forms a statement of estimated total expenditures for activities under the plan during such semi-annual period, indicating the amount of funds available to pay the non-Federal share of the amount estimated.

§ 143.22 **Certifying payment.**

Payment will be certified after: (a) the State has on file in the Office of Education a plan approved by the Commissioner; (b) the estimates and reports required in §§ 143.18 and 143.21 have been reviewed; and (c) the Commissioner is satisfied that the State will be able to carry out the plan during the current fiscal year.

§ 143.23 Interest on Federal grants.

Interest earned on Federal grants shall be credited to the United States. The State agency shall submit as a part of each fiscal report a statement showing the amount of interest earned on Federal funds during that period. Ordinarily such interest earnings will be considered in the adjustment of the Federal-State account; but for the last year of the program, payment of interest must be made by the State to the Commissioner.

Subpart E—State Agency Program Activities

§ 143.24 General program operations.

Under Title V, Part A, of the Act there may be Federal participation in such State agency expenditures as are directly related to the establishment and maintenance of adequate programs of guidance, counseling, and testing developed under the plan.

(a) *Categories of activities.* Such programs may include the following activities: (1) The organization, general direction and coordination of the guidance, counseling, and testing programs established under the plan; (2) planning State programs and assisting in the planning of local programs; (3) assisting local guidance personnel in establishing, maintaining, or improving programs; (4) helping in the planning and preparation of materials and information for State and local programs; (5) evaluating the results of guidance, counseling, and testing programs; and (6) such other related activities as may be necessary for the organization, maintenance, and improvement of programs established under the plan.

(b) *Categories of expense.* The costs of such programs for which funds may be used include items such as the following, but only to the extent that they are directly related to the supervision and operation of the plan programs of guidance, counseling, and testing: (1) Salaries of the State staff, in both professional and clerical positions, including the employer's contribution to retirement, workmen's compensation, or other welfare funds maintained for one or more general classes of employees of the State educational agency; (2) communication; (3) office equipment and supplies; (4) printing and printed materials; (5) the purchase or rental of tests, answer sheets, profile sheets, cumulative record forms, and such other materials as may be necessary under the plan; (6) the rental of equipment conducive to efficiency in scoring, processing, and reporting the results of tests administered under the plan or, if owned by State or local educational agencies, the pro-rata share of the cost of maintaining and operating such equipment; (7) rental of office space as provided in paragraph (c) of this section; and (8) other costs provided for in the following sections.

(c) *Office space.* Federal financial participation shall be available in expenditures for office space (including the cost of utilities and janitorial services) in privately or publicly owned buildings if: (1) The expenditures for the space are necessary, reasonable, and properly related to the supervision and operation of the plan programs of guidance, counseling, and testing; (2) the State agency will receive the benefits of the expenditures during the period of occupancy commensurate with such expenditures; (3) the amounts paid by the State agency are not in excess of comparable rental in the particular locality; (4) the expenditures represent an actual cost to the State agency; and (5) in publicly owned buildings, like charges are made to other agencies occupying similar space.

§ 143.25 Travel expense.

The categories of allowable travel expense for activities under the plan are the following, where consistent with State law and regulations: (a) Travel expense of the State staff when on official business; (b) travel expense of instructors necessary to provide professional assistance to State or local supervisors, counselors, or other guidance personnel; (c) travel expense of consultants retained by the State educational agency; and (d) travel expense of members of the State Advisory Committee for guidance, counseling, and testing, when on official committee business.

§ 143.26 Studies, investigations, and experimentations.

Expenditures may be made under the plan to determine and evaluate: (1) Local or State guidance, counseling, and testing needs; (2) the effectiveness of procedures in guidance, counseling, and testing; and (3) the results of the program operations. Such expenditures may include those items allowed under §§ 143.24(b) and 143.25 which are appropriate.

§ 143.27 Supervision of professional personnel.

The Federal Government will participate on the same basis, as in the categories of expense set forth in § 143.24(b), with respect to the cost of the salaries and necessary travel expenses of supervisors, consultants, or instructors used by the State agency in the conduct of conferences and workshops to develop and improve and strengthen the conduct of guidance, counseling, and testing programs and to develop materials helpful to the development and conduct of guidance, counseling, and testing programs.

Subpart F—Program for Testing Aptitudes and Ability

§ 143.28 Purposes of testing program.

The Federal Government will participate in expenditures to establish and maintain a program for testing aptitudes and abilities of students in public secondary schools and, if authorized by law, in other secondary schools, to identify students with outstanding aptitudes and abilities, reports of which may be used for the following purposes: (a) To provide such information about the aptitudes and abilities of secondary school students as may be needed by secondary school guidance personnel in carrying out their duties; and (b) to provide information to other educational institutions relative to the educational potential of students seeking admission to such institutions.

§ 143.29 Testing defined.

"Testing" as found in section 503(a)(1) of the Act means the use of tests which measure abilities from which aptitudes for the individual's educational development validly may be inferred.

§ 143.30 Conduct of testing program.

(a) *Utilizing other agencies.* In administering the testing program the State educational agency may: (1) Utilize local educational agencies to conduct the testing program under State supervision; (2) provide for a testing program to be planned and administered by a local educational agency under the plan in accordance with § 143.9; and (3) contract with public or private institutions or agencies, or with individuals for services (e.g., scoring tests and reporting test results) which are not inconsistent with its responsibilty.

(b) *Expenditures of local educational agencies.* If the State agency conducts a testing program under the provisions of subparagraph (1) or (2) of paragraph (a) of this section, expenditures otherwise appropriate are subject to Federal participation when made by the local educational agency for (1) the purchase or rental of tests, answer sheets, profile sheets, cumulative record forms, and such other materials as may be necessary under the plan; (2) the rental of equipment conducive to efficiency in scoring, processing, and reporting the results of tests administered under the plan or, if owned by State or local educational agencies, the pro-rata share of the cost of maintaining and operating such equipment; or (3) contractual services not inconsistent with State and local responsibilities for scoring tests and reporting test results.

§ 143.31 Plan requirements solely applicable to the program for testing aptitudes and abilities.

The plan shall describe in general terms the primary objectives of the program including procedures for making this program available to all secondary school students in a specified grade or grades and shall provide for annual reviews by the State agency of progress toward meeting these objectives. The plan shall describe the provisions for carrying out the programs, including: (a) The types of tests to be utilized for the measurement of aptitudes and abilities and the grade(s) to be tested; and (b) the procedures to be utilized in the administration and scoring of tests, and in the reporting and recording of test results.

Subpart C—Guidance and Counseling Programs in Public Secondary Schools

§ 143.32 Scope and purposes.

Guidance and counseling programs in public secondary schools under the plan shall serve both to advise students regarding courses of study best suited to their ability, aptitudes, and skills, and to encourage students with outstanding aptitudes and ability to complete their secondary school education, take the necessary courses for admission to institutions of higher education, and enter such institutions. These programs shall provide assistance to students by assessing abilities, aptitudes, interests, and educational needs; developing understandings of educational and career opportunities and requirements; and helping them make the best possible use of these opportunities through the formulation and achievement of realistic goals. Such programs may be carried out by the following activities when directed to the foregoing purposes:

(a) Collecting, organizing, and interpreting such information as may be appropriate to the understanding of the student's abilities, aptitudes, interests, and other personal assets and liabilities related to educational and career planning and progress.

(b) Making available to the student and his parents such educational and career information as may be essential for them to understand the various educational and career opportunities and requirements related to the choice of an educational program and a career.

(c) Providing individual counseling (1) to help the student and his parents develop a better understanding of the student's educational and occupational strengths and weaknesses; (2) to help the student and his parents relate his abilities and aptitudes to educational and career opportunities and requirements; (3) to help the student, with the assistance of his parents, make appropriate educational plans, including the choice of courses in the secondary school and the choice of an institution of higher education; (4) to stimulate desires in the student to utilize his abilities in attaining appropriate educational and career goals; and (5) to provide for the student such assistance as may be needed for the development of his aptitudes and the full utilization of his abilities.

(d) Providing services to encourage and assist students in making educational transitions, such as placement in educational institutions beyond the high school.

(e) Providing such group activities as may be necessary to orient students to the (1) high school program; (2) educational opportunities beyond the high school; and (3) career opportunities and requirements.

(f) Providing to teachers and school administrators such information about individual students or groups of students as may be necessary to enable them to plan curricular and instructional programs appropriate to the educational needs of the student body and to the manpower needs of the State and the Nation.

(g) Collecting and analyzing such information as may be needed to evaluate the guidance and counseling program and to provide such guidance information as may be available and needed to evaluate the school's program in terms of the educational needs of the students and of the State and the Nation.

§ 143.33 Categories of expenditures applicable to approved local guidance and counseling programs.

Categories of allowable expenditures for the supervision and operation in public secondary schools of local guidance and counseling programs, approved by the State educational agency under the standards established pursuant to § 143.34(a), include the following:

(a) Salaries and necessary travel expenses of local school guidance personnel to the extent that they are engaged specifically in activities under the plan and within the scope of the activities listed in § 143.32. The employer's contribution to retirement, workmen's compensation, or other welfare funds maintained for one or more general classes of employees of the local educational agency may be included.

(b) Clerical assistance directly related to the operation of a local educational agency's guidance and counseling program under the plan.

(c) The purchase and maintenance of office equipment necessary to meet the plan requirements.

(d) The purchase of such materials (including library source materials) and supplies as may be necessary to fulfill the functions of the guidance and counseling program under the plan.

(e) Necessary travel expenses for local guidance personnel engaged in plan activities to participate in such conferences and workshops as may be approved under the plan by the State educational agency.

§ 143.34 Plan requirements solely applicable to guidance and counseling programs.

The plan shall describe a program(s) for guidance and counseling which shall include the following items:

(a) The standards and procedures to be employed by the State educational agency in approving local school programs of guidance and counseling for participation under the plan. (1) Such standards shall provide for the utilization of a testing program which fulfills the testing program provisions established by the State plan pursuant to § 143.31. (2) In addition, there shall be stated the recommended and the minimum standards for approval, and the measures to be employed in achieving the recommended standards. These standards shall cover each of the following areas: (i) The guidance and counseling activities to be provided; (ii) the qualifications for local school guidance positions; (iii) the counselor-student ratio; and (iv) the physical facilities, equipment, and materials.

(b) The methods and procedures to be employed by the local educational agencies in the supervision of local school guidance and counseling programs under the plan.

(c) The means to be used by the local educational agencies for coordinating the guidance and counseling program with other student personnel services.

Dated: December 23, 1959.

[SEAL] WAYNE O. REED,
Acting U.S. Commissioner of Education.

Approved: December 28, 1959.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 59-11141; Filed, Dec. 30, 1959; 8:45 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 936]

FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

Handling

Notice is hereby given that the Department is considering a proposed amendment, as hereinafter set forth, to the rules and regulations (Subpart—Rules and Regulation; 7 CFR 936.100, 24 F.R. 469) currently in effect pursuant to the applicable provisions of Marketing Agreement No. 85, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in California. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendment to the said rules and regulations was proposed by the Control Committee, established under the said amended marketing agreement and order as the agency to administer the terms and provisions thereof. The amendment changes the representation of certain districts on the Bartlett Pear Commodity Committee. The said amendment is as follows:

1. Delete § 936.116 and substitute therefor the following:

§ 936.116 Changes in representation of certain districts on Bartlett Pear Commodity Committee.

The representation or membership on the Bartlett Pear Commodity Committee is changed to provide for:

(a) Three (3) members to represent the North Sacramento Valley District, Central Sacramento Valley District, Sacramento River District, Stockton District, Contra Costa District, Santa Clara District, and Solano District;

(b) Two (2) members to represent the Placer District;

(c) Three (3) members to represent the Lake District;

(d) One (1) member to represent the North Coast District and the North Bay District;

(e) One (1) member to represent the Colfax District; and

(f) Two (2) members to represent the El Dorado District; and all of the area not included in the North Sacramento Valley District, Central Sacramento Valley District, Colfax District, Placer District, Sacramento River District, Stockton District, Solano District, Contra Costa District, Santa Clara District, Lake District, North Coast District, and North Bay District.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendment should do so by forwarding same to the Director, Fruit and Vegetable Division, Agricultural Marketing Service, Room 2077, South Building, Washington 25, D.C., not later than the tenth day after publication of this notice in the FEDERAL REGISTER.

Dated: December 28, 1959.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-11146; Filed, Dec. 30, 1959; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Substances Generally Recognized as Safe; Trace Minerals in Animal Feed

In accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 409, 701, 72 Stat. 1785, 52 Stat. 1055, as amended; 21 U.S.C. 348, 371), the Commissioner of Food and Drugs, pursuant to the authority delegated to him by the Secretary of Health, Education, and Welfare (23 F.R. 9500), proposes to add the following trace minerals that are incorporated in animal feeds to the list of substances generally recognized as safe (Subpart B, § 121.101 (24 F.R. 9368)):

§ 121.101 Substances that are generally recognized as safe.

* * * * *

(d) * * *

(9) *Trace minerals added to animal feeds.* These substances are added to animal feeds as nutritional dietary supplements, under the conditions set forth, and within the limits indicated in the list:

Element	Limits	Conditions
	Percent	
Cobalt	0.0002	To feeds for ruminants only.
Source compounds:		
Cobalt acetate.		
Cobalt carbonate.		
Cobalt chloride.		
Cobalt oxide.		
Cobalt sulfate.		
Copper	.0050	
Source compounds:		
Copper carbonate.		
Copper chloride.		
Copper gluconate.		
Copper hydroxide.		
Copper oxide.		
Copper sulfate.		
Iodine	.00015	
Source compounds:		
Calcium iodate.		
Cuprous iodide.		
Potassium iodate.		
Potassium iodide.		
Thymol iodide.		
Iron	.0250	
Source compounds:		
Ferric ammonium citrate.		
Ferric chloride.		
Ferric oxide.		
Ferric phosphate.		
Ferric pyrophosphate.		
Ferrous carbonate.		
Ferrous gluconate.		
Ferrous sulfate.		
Reduced iron.		
Manganese	.0050	
Source compounds:		
Manganese carbonate.		
Manganese chloride.		
Manganese dioxide.		
Manganese gluconate.		
Manganese oxide.		
Manganese sulfate.		
Manganese phosphate (dibasic).		
Zinc	.0050	To the diet of poultry and swine only.
Source compounds:		
Zinc acetate.		
Zinc carbonate.		
Zinc chloride.		
Zinc oxide.		
Zinc sulfate.		

The Commissioner of Food and Drugs hereby offers an opportunity to all interested persons to present their views in writing with reference to this proposal to the Hearing Clerk, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington 25, D.C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER. Comments may be accompanied by a memorandum or brief in support thereof, and it is requested that all comments be submitted in quintuplicate.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interprets or applies sec. 409, 72 Stat. 1785 et seq.; 21 U.S.C. 371)

Dated: December 22, 1959.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 59-11133; Filed, Dec. 30, 1959; 8:45 a.m.]

NOTICES

DEPARTMENT OF THE TREASURY

Foreign Assets Control

SILK PIECE GOODS

Available Certification by the Government of India

Certificates of origin issued by the Ministry of Commerce and Industry of the Government of India under procedures agreed upon between that Government and the Foreign Assets Control are now available with respect to the importation into the United States directly, or on a through bill of lading, from India of the following commodity:

Silk piece goods, muga.

[SEAL] ELTING ARNOLD,
Acting Director, Foreign Assets Control.

[F.R. Doc. 59-11056; Filed, Dec. 30, 1959; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

EL CAJON AUCTION & CATTLE CO., INC., ET AL.

Proposed Posting of Stockyards

The Director of the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

El Cajon Auction & Cattle Co., Inc., El Cajon, California.

Pumpkin Center Auction Company, Pumpkin Center, California.

Notice is hereby given, therefore, that the said Director, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 28th day of December 1959.

JOHN C. PIERCE,
Acting Director, Livestock Division, Agricultural Marketing Service.

[F.R. Doc. 59-11147; Filed, Dec. 30, 1959; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13034 etc.; FCC 59-1290]

COUNTY BROADCASTING CORP. ET AL.

Memorandum Opinion and Order Amending Issues

In re applications of: County Broadcasting Corporation, Gloucester, Massachusetts, Docket No. 13064, File No. BP-11602; Consolidated Broadcasting Industries, Inc., Natick, Massachusetts, Docket No. 13065, File No. BP-11677; WKOX, Inc., Beverly, Massachusetts, Docket No. 13066, File No. BP-12423; Charles A. Bell, George J. Helmer, III, Wayne H. Lewis, and Edward Bleier, d/b as Newton Broadcasting Company, Newton, Massachusetts, Docket No. 13067, File No. BP-12884; Transcript Press, Inc., Dedham, Massachusetts, Docket No. 13068, File No. BP-12901; Berkshire Broadcasting Corporation, Hartford Connecticut, Docket No. 13069, File No. BP-12917; United Broadcasting Co., Inc., Beverly, Massachusetts, Docket No. 13070, File No. BP-13103; Grossco, Inc., West Hartford, Connecticut, Docket No. 13071, File No. BP-13141; for construction permits for new standard broadcast stations.

1. The Commission has before it a petition for clarification or amendment of Issue 5, filed August 28, 1959, by WKOX, Inc., and a reply thereto, filed October 8, 1959, by the Commission's Broadcast Bureau.

2. WKOX, Inc., is an applicant for a new standard broadcast station at Beverly, Massachusetts. In response to a section 309(b) letter, WKOX, Inc., filed an engineering statement designed to show that its proposal would not contravene § 3.188(b)(1) of the Commission's rules and requested a waiver of the requirements of the Rule should the Commission conclude otherwise. While Issue 5 in the captioned proceeding inquires whether the proposal of WKOX, Inc., would provide the coverage of the city to be served, as required by § 3.188 (b)(1) of the rules, there was inadvertently omitted from the issue the question of whether a waiver of this Rule is warranted in the event of non-compliance therewith. The request of WKOX, Inc., that such issue be included will accordingly be granted.

3. Issue 6 in the captioned proceeding requires a determination of whether applicant Berkshire Broadcasting Corporation would provide the coverage of the city to be served as required by § 3.188 (b)(2) of the rules, and Issue 9 directs the same inquiry to the proposal of applicant United Broadcasting Co., Inc. We agree with the Broadcast Bureau that these two issues should be amended to permit a determination of whether a waiver of § 3.188(b)(2) of the rules is warranted in the event of non-compliance therewith.

Accordingly, it is ordered, This 22d day of December 1959, that the petition for clarification or amendment of Issue 5, filed August 28, 1959, by WKOX, Inc., is granted;

It is further ordered, That Issue 5 is amended to read as follows:

5. To determine whether the instant proposal of WKOX, Inc., would provide the coverage of the city sought to be served, as required by § 3.188(b)(1) of the Commission rules, and if not, whether circumstances exist which would warrant a waiver of this requirement.

It is further ordered, On the Commission's own motion, that Issues 6 and 9 are amended to read as follows:

6. To determine whether the instant proposal of Berkshire Broadcasting Corporation would provide the coverage of the city sought to be served, as required by § 3.188(b)(2) of the Commission rules, and if not, whether circumstances exist which would warrant a waiver of this requirement.

9. To determine whether the instant proposal of United Broadcasting Co., Inc., would provide the coverage of the city sought to be served, as required by § 3.188(b)(2) of the Commission rules, and if not, whether circumstances exist which would warrant a waiver of this requirement.

Released: December 23, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-11150; Filed, Dec. 30, 1959; 8:46 a.m.]

[Docket No. 13326; FCC 59-1299]

KDEF BROADCASTING CO.

Order Designating Application for Hearing on Stated Issues

In re application KDEF Broadcasting Co. (KDEF), Albuquerque, New Mexico, Docket No. 13326, File No. BP-12293; Has: 1150 kc, 1 kw, Day; Req: 1150 kc, 500 w, 1 kw-LS, DA-N, U, for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 22d day of December 1959;

The Commission having under consideration the above-captioned and described application;

It appearing that except as indicated by the issues specified below, the instant applicant is legally, technically, financially, and otherwise qualified to construct and operate the instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated September 15, 1959, and incorporated herein by reference, notified the applicant and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of the application would serve the public interest, convenience and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the applicant filed a timely reply to the aforementioned letter, which reply has not, however, entirely eliminated the grounds and reasons precluding a grant of the application and requiring an evidentiary hearing on the issues hereinafter specified; and

It further appearing that by amendment filed November 5, 1959, the instant applicant purported to show, by means of certain population statistics obtained from the Mountain States Telephone and Telegraph Company, that the population in Albuquerque has substantially increased since the 1950 U.S. Census and, therefore, that the subject proposal complies with the provisions of § 3.28 (c)(3) of the rules, regarding nighttime operation, but this population data is unsupported by any map indicating the relationship of the normally protected contour and the actual interference-free contour to the areas covered by the Telephone Company statistics, thereby rendering it impossible to determine upon what data (Telephone Company statistics or a combination thereof with 1950 U.S. Census figures) the entire area of concern is based; and

It further appearing that by amendment filed November 5, 1959, the instant applicant purported to comply with § 3.188 of the Commission rules, but it failed to demonstrate that the nighttime interference-free contour would adequately cover Albuquerque pursuant to the provisions of this section; and

It further appearing that after consideration of the foregoing and the applicant's reply, the Commission is still unable to make the statutory finding that a grant of the application would serve the public interest, convenience, and necessity; and is of the opinion that the application must be designated for hearing on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station KDEF, Albuquerque, New Mexico and the availability of other primary service to such areas and populations.

2. To determine whether interference received from Station KSAL, Salina, Kansas would affect more than ten percent of the population within the normally protected primary service area of the instant proposal of KDEF Broadcasting Company (BP-12293), in contravention of § 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

3. To determine whether the instant proposal of the KDEF Broadcasting Company (BP-12293) would provide the coverage of the city sought to be served, as required by § 3.188(b)(2) of the Commission rules.

4. To determine, in the light of the evidence adduced, pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That, to avail itself of the opportunity to be heard, the instant applicant, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

Released: December 28, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-11152; Filed, Dec. 30, 1959; 8:47 a.m.]

[Docket No. 12788 etc.; FCC 59M-1764]

CHARLES J. LANPHIER ET AL.

Notice of Conference

In re applications of Charles J. Lanphier, Golden Valley, Minnesota et al., Docket No. 12788, File No. BP-11629, Docket Nos. 12792, 12795, 12796, 12797, 12798, 12799, 12800, 12801, 12802, 12803, 12805, 12905, 12906, 12907; for construction permits.

There will be a hearing conference relating to the nonengineering issues for the applications in Group A on January 6, 1960, at 10:00 a.m.

Dated: December 22, 1959.

Released: December 23, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-11153; Filed, Dec. 30, 1959; 8:47 a.m.]

[Docket No. 13330 etc.; FCC 59-1302]

RADIO ATASCADERO AND CAL-COAST BROADCASTERS

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Jeanette B. Arment tr/as Radio Atascadero, Atascadero, California, Docket No. 13330, File No. BP-12068, Requests: 1490 kc, 100 w, U; Edward E. Urner and Bryan J. Coleman, d/b as Cal-Coast Broadcasters, Santa Maria, California, Docket No. 13331, File No. BP-12613, Requests: 1480 kc, 1 kw, Day; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 22d day of December 1959;

The Commission having under consideration the above-captioned and described applications;

It appearing, that except as indicated by the issues specified below, both applicants are legally, technically, financially, and otherwise qualified to construct and operate their instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission in a letter dated July 7, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of either of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring a hearing on the particular issues hereinafter specified; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operations and the availability of other primary service to such areas and populations.
2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations involved in the interference between the proposals.
3. To determine whether interference received from the proposed operation of Cal-Coast Broadcasters would affect more than ten percent of the population within the normally protected primary service area of the instant proposal of Radio Atascadero, in contravention of § 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.
4. To determine in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.
5. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the instant applications should be granted.

It is further ordered, That, in the event of a grant of the application of Radio Atascadero, the construction permit shall contain the condition that program tests will not be authorized until the permittee has submitted field intensity measurements, taken in compliance with the Commission rules, establishing that the radiation has been reduced to substantially 47.5 mv/m as proposed.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 28, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-11154; Filed, Dec. 30, 1959; 8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-20445, etc.]

ESTATE OF LYDA BUNKER HUNT ET AL.

Order Providing for Hearings and Suspending Proposed Changes in Rates [1]

DECEMBER 23, 1959.

In the matters of Estate of Lyda Bunker Hunt, Docket No. G-20445; Sinclair Oil & Gas Company, Docket No. G-20446; Sun Oil Company, Docket No. G-20447; Continental Oil Company, Docket No. G-20448; J. M. Huber Corporation, Docket No. G-20449; H. L. Hawkins and H. L. Hawkins, Jr. (Operator), et al., Docket No. G-20450; Texaco Inc., Docket No. G-20451; Pan American Petroleum Corporation, Docket No. G-20452; Alvin C. Hope (Operator) et al., Docket No. G-20453; Bruce Anderson, et al., Docket No. G-20454; Secure Trusts, Docket No. G-20455; Claude M. Langton, Trustee, Docket No. G-20456.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Notice of change dated—	Date tendered	Effective date [3] unless suspended	Rate suspended until—	Cents per Mcf.	
									Rate in effect	Proposed increased rate
G-20445	Estate of Lyda Bunker Hunt.	2	6	Trunkline Gas Co. (Clear Creek Field, Allen and Beauregard Parishes, La.).	Undated	11-23-59	1-1-60	6-1-60	[7] 18.1	[13] 18.3
G-20446	Sinclair Oil & Gas Co.	151	1	Colorado Interstate Gas Co. (Greenwood Field, Baca County, Col.).	11-23-59	11-24-59	12-25-59	5-25-59	[8] 15.0	[14] 16.0
G-20447	Sun Oil Co.	89	7	Trunkline Gas Co. (Clear Creek Field, Allen and Beauregard Parishes, La.).	11-10-59	11-23-59	1-1-60	6-1-60	[9] 18.1	[13] 18.3
G-20448	Continental Oil Co.	140	3	Cities Service Gas Co. (Rhodes Field, Barber County, Kans.).	11-18-59	11-23-59	12-24-59	5-24-60	12.0	[14] 13.0
G-20449	J. M. Huber Corp.	39	2	Cities Service Gas Co. (Barber County, Kans.).	Undated	11-23-59	12-24-59	5-24-60	12.0	[14] 13.0
G-20450	H. L. Hawkins and H. L. Hawkins, Jr. (Operator) et al.	13	7	Trunkline Gas Co. (S. Epps Field, E. and W., Carroll Parish, La.).	11-19-59	11-23-59	1-1-60	6-1-60	[10] 18.1	[13] 18.3
G-20451	Texaco Inc.	123	2	Lone Star Gas Co. (Golden Trend Field, Garvin and McClain Counties, Okla.).	Undated	11-25-59	12-26-59	[4] 5-26-59	11.0	[14] 16.8
G-20452	Pan American Petroleum Corp.	234	2	El Paso Natural Gas Co. (Jalmat and Eumont Fields, Lea County, N. Mex.).	11-18-59	11-23-59	1-1-60	[5] 6-1-60	10.5	[14] 15.0686
G-20452	Pan American Petroleum Corp.	249	3	El Paso Natural Gas Co. (Crosby-Devonian Field, Lea County, N. Mex.).	11-18-59	11-23-59	1-1-60	[5] 6-1-60	10.5	[14] 15.0686
G-20453	Alvin C. Hope (Operator) et al.	1	2	West Lake Natural Gasoline Co. (Nena Lucia Field, Nolan County, Tex.).	11-20-59	11-23-59	1-22-60	[6] 1-23-60	5.5	[14] 6.9918
G-20454	Bruce Anderson, et al.	[2] 2	....	Colorado Interstate Gas Co. (Greenwood Field, Morton County, Kans.).	11-18-58	11-23-59	12-24-59	5-24-60	(2)	
		2	1		Undated.	11-23-59	12-24-59	5-24-60	....	[14] 16.0
G-20455	Secure Trusts	2	6	Trunkline Gas Co. (Clear Creek Field, Allen and Beauregard Parishes, La.).	do	11-23-59	1-1-60	6-1-60	[11] 18.1	[13] 18.3
G-20456	Claude M. Langton, Trustee.	1	6	do	do	11-23-59	1-1-60	6-1-60	[12] 18.1	[13] 18.3

[2] The proposed new rate schedule supersedes M. A. Machris and Bruce Anderson FPC Gas Rate Schedule No. 1, as amended, and Cities Service Oil Company (Operator) et al. FPC Gas Rate Schedule No. 87, insofar as the latter rate schedule is applicable to respondents' interests. The rates in effect under these two rate schedules are 12.0 cents and 15.0 cents respectively.

[3] The stated effective dates are those requested by respondents, or the first day after the expiration of statutory notice, whichever is later.

[4] Or until five months after deliveries of gas commence under the certificates granted in the matters of Phillips Petroleum Company, et al., Docket Nos. G-17897 et al., if later.

[5] Or until five months after the rates suspended in Docket Nos. G-18417 and G-18418 are made effective, if later.

[6] Or until one day after the rate suspended in Docket No. G-19156 is made effective, if later.

[7] Rate in effect subject to refund in Docket No. G-17162.

[8] Subject to BTU adjustment.

[9] Rate in effect subject to refund in Docket No. G-17346.

[10] Rate in effect subject to refund in Docket No. G-17367.

[11] Rate in effect subject to refund in Docket No. G-17161.

[12] Rate in effect subject to refund in Docket No. G-17164.

[13] Pressure base is 15.025 psia.

[14] Pressure base is 14.65 psia.

In support of their proposed periodic rate increases, Estate of Lyda Bunker Hunt (Hunt); Sun Oil Company (Sun), H. L. Hawkins and H. L. Hawkins, Jr., (Operator) et al. (Hawkins), Secure Trusts and Claude M. Langton, Trustee (Langton) cite their contracts and state that the periodic price increase provisions are integral parts of the contracts, which resulted from arm's-length negotions. Sun and Hawkins add that the increased prices do not exceed the fair value of gas in the area. Hunt, Secure Trusts, and Langton further state that such pricing arrangements are common in long-term contracts, the increase fulfills a contract obligation, and the disallowance thereof would constitute deprivation of property without due process of law.

In support of its proposed renegotiated increased rate, Sinclair Oil & Gas Company submits copies of the renegotiated agreement and states that the increased price was arrived at after arm's-length bargaining, will not result in an excessive rate, and will assist in obtaining a just and reasonable rate.

In support of their proposed periodic rate increases, Continental Oil Company and J. M. Huber Corporation (Huber) cite their contracts and state that the proposed rates are not out of line with others being paid in the area (for initial services) and denial thereof would be discriminatory. Huber adds that the increased price is an indivisible part of the original contract which resulted from arm's-length bargaining.

In support of its proposed favored-nation rate increase, Texaco Inc. (Texaco) cites its contract and an initial rate for sales authorized by the Commission's order issued September 18, 1959, in the matters of Phillips Petroleum Company, et al., Docket Nos. G-17897, et al. Texaco adds that its contract was negotiated at arm's length and that the increased rate will provide revenues for further exploration and will partially compensate for increasing costs of development, operations, and maintenance.

In support of its proposed favored-nation rate increases, Pan American Petroleum Corporation (Pan American) cites its contracts and the proposed rate increases of Phillips Petroleum Company which were suspended in Docket Nos. G-18417 and G-18418. Pan American further states that the increased prices are a matter of contractual obligation under contracts resulting from bargaining at arm's length and denial thereof would be unfair and unreasonable and would deprive property without due process.

In support of its proposed revenue-sharing rate increase, Alvin C. Hope (Operator), et al. (Hope) cites his contract and a rate increase for Hope's revenue sharer, West Lake Natural Gasoline Company. The increased rate of the revenue sharer was suspended in Docket No. G-19156 until January 22, 1960, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act. Hope states that the increased rate is fair and equitable and comparable to others in the area. Hope further states that the gas is from oil wells which are declining in production as costs of operation increase.

Bruce Anderson, et al., offers no support for its renegotiated increased rate.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements and rate schedule be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements and rate schedule.

(B) Pending hearings and decisions thereon, each of the aforementioned supplements and rate schedule is suspended and the use thereof deferred until the time indicated in the above-designated

"Rate Suspended Until" column, plus footnotes thereto, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements nor rate schedule hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure.

By the Commission.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 59-11121; Filed, Dec. 30, 1959; 8:45 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-103]

MOORE-McCORMACK LINES, INC.

Notice of Application and of Hearing

Notice is hereby given of the application of Moore-McCormack Lines, Inc., for written permission of the Maritime Administrator, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, for its owned vessel, the SS MORMACSUN, which is under time charter to States Marine Lines to engage in one intercoastal voyage commencing at United States North Pacific ports on or about January 15, 1960, to load a full cargo of lumber and/or lumber products for discharge at United States Atlantic ports. This application may be inspected by interested parties in the Office of Government Aid, Maritime Administration.

A hearing on the application has been set before the Maritime Administrator for January 6, 1960, at 9:30 a.m., e.s.t., in Room 4519, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on January 5, 1960, notify the Secretary, Maritime Administration in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Administration, petitions for leave to intervene received after the close of business on January 5, 1960, will not be granted in this proceeding.

Dated: December 28, 1959.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 59-11151; Filed, Dec. 30, 1959; 8:46 a.m.]

Office of the Secretary

LAWRENCE H. ZAHN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months:

A. Deletions: U.S. Plywood, Beech Aircraft.
B. Additions: Upjohn, Miles Laboratories, Thiokol.

This statement is made as of December 3, 1959.

LAWRENCE H. ZAHN.

DECEMBER 17, 1959.

[F.R. Doc. 59-11144; Filed, Dec. 30, 1959; 8:45 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

A numerical list of parts of the Code of Federal Regulations affected by documents published to date during December. Proposed rules, as opposed to final actions, are identified as such.

3 CFR

	Page
Proclamations:	
Dec. 18, 1907	9559
Nov. 24, 1908	9559
Apr. 17, 1911	9559
Jan. 15, 1918	9559
Oct. 17, 1927	9559
1349	9559
2169	9559
2173	9559
2174	9559
2178	9559
2187	9559
2188	9559
2189	9559
2190	9559
2285	9559
2289	9559
2293	9559
3279	10133
3290	10133
3326	9651
3327	9763
3328	10133
3329	10711
Executive orders:	
Dec. 9, 1852	10310
July 2, 1910	10446
3820	9559
3889	9783
4436	9559
5794	10108
5814	9559
6143	10688
6276	10688
7443	9559
7908	9563, 9651
8531	9563, 9651
8647	10987
10000	9565
10011	9565
10530	9565
10849	9559
10850	9559
10851	9563
10852	9565
10853	9565
10854	9565
10855	9565
10856	9763

5 CFR

2	10331
6	10611
24	10097
29	10273
325	10141

6 CFR

10	10941
52	10941
331	9655, 9925, 10941
332	9691
334	9655
341	11063
352	10943
371	11063
372	10869
373	10869
421	10249, 10275
427	10189
446	10423
464	9691
468	10191
472	10191

6 CFR—Continued

	Page
475	10029
485	10711

7 CFR

5	9778
7	10727
47	10055
52	9975
81	9566
301—363	10727
351	9923
401	10866, 10867
711	10868
722	9693, 9703, 9778, 10056, 10135, 10136, 10138
723	9610
728	10139
729	9611
730	9567, 9615, 9704
811	10425
812	10868
813	9705
815	10139
833	9706
845	9706
850	9707, 10426, 10428–10431, 10433–10439, 10611
868	10250
878	10252
903	9567, 9807
904	9567, 10939
905—908	9807
909	9707
911—913	9807
914	9618, 9779, 10056, 10140, 10275, 10439, 10713, 10941
916—919	9807
921	9807
923—925	9807
927	10619
928—932	9807
933	9654, 10056–10058, 10327, 10328, 10330
935	9807
938	10007, 10008
941—942	9807
943	9568, 9807
944	9807
946	9807
948—949	9807
952	9807
953	9708, 9780, 10058, 10140, 10275, 10714
954	9807
955	10059
956	9807
957	10140
963	9807
965—968	9807
971—972	9807
974—978	9807
980	9807
982	9807
985—988	9807
991	9807
994—995	9807
996	9567, 10939
997	9655
998	9807
999	9567, 10939
1000	9807
1002	9807
1004—1005	9807
1008—1009	9807

7 CFR—Continued

	Page
1011—1014	9807
1015	9708
1016	9807
1017	10276
1018	9807, 10620
1023	9807
1027	11071
1070	9780
1102	9568
Proposed rules:	
51	10983
301	10688
718	9678
817	9934
903	10908
905	9742
914	10077
921	10911
924	10207, 10984
927	10912
928	10913
936	11108
937	10455
953	10158
961	10258
963	9993
987	9742
1014	9742
1025	10207, 10984

9 CFR

18	9975
53	10331
78	10620
83	9926
92	9838
Proposed rules:	
78	10077
131	9902
155	10261

10 CFR

3	10869
7	10946
9	10009

12 CFR

204	9977
221	10331
521	9578
522	9578
545	9580, 9657
555	9693
563	9657, 9780, 9977
Proposed rules:	
221	9999

14 CFR

1	9839
40	9765, 9767, 9839
41	9768, 9772, 9840
45	10191
47	10192
60	11078
225	10253
249	9977, 10947
296	10873
297	9580, 9978
399	9619
507	9620, 9778, 9984, 9985, 10099, 10141, 10192, 10277, 10714
514	10621
550	11078
565	11079